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# THE ROYAL GOVERNMENT IN VIRGINIA

1624-1775

BY

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To

SAMUEL CHILES MITCHELL

AN INSPIRING TEACHER AND A LOYAL FRIEND

THIS VOLUME IS AFFECTIONATELY

DEDICATED



## PREFACE

THE historians who have written upon colonial administration in Virginia have emphasized the conditions existing in the seventeenth century. Bruce, a recognized authority in his economic and social histories and especially in his more recent institutional history, has confined himself exclusively to the seventeenth century. The histories of the whole colonial period, by Burk and by Campbell, are unsatisfactory. Doyle, whose history has been somewhat superseded, deals with the colonies in general without giving sufficient attention to Virginia. Osgood's scholarly work on the colonies is confined to the seventeenth century. With the exception of Osgood's study, the history of the colony has been written largely from a provincial standpoint, with special emphasis upon the colony itself, and with too little attention to the British point of view. This is especially true of the period 1690-1750, which marks the middle period between colonization and revolution. This period includes the history of two generations of men, who evidently had no small part in that earlier resistance to royal authority, which finally culminated in open revolt. Political, economic and social conditions in the colony were gradually undergoing changes. This was especially true after about 1690. To get an adequate conception of the period of twenty-five years immediately preceding the Revolution we must, therefore, study the middle period 1690-1750 as well as the earlier period of settlement 1607-1690.

It is thus readily seen that a careful study of the administration of the government after 1690 should furnish an

account of a very important and, in fact, not well known period in the history of the colony. From 1651 to 1695 Parliament had passed certain navigation acts, but they were not rigorously enforced. After 1695, however, when England sought to give systematic form to her colonial administration, and to apply strictly a commercial policy, the new navigation act was made effective in its application. It was soon after this date that the permanent Board of Trade was established, and also that more attention was given to the formation of a regular system of royal officials in the colony. After this date, and even beginning with Culpeper (1682), the instructions to the governors included many matters of detail, showing the careful attention given by the home government to affairs in the colony.

The wars with France and Spain had no small part in influencing the attitude of England towards her colonies. This was the beginning of England's naval supremacy, and it was at this time that the mother country desired more than ever before to utilize the colonies as a source of naval supplies. It was during the first twenty-five years of this middle period, 1690-1715, that there were numerous complaints against the colonies for the violation of the acts of trade. English merchants complained of irregularities, and the colonists maintained that the demands of the merchants were unjust. But during the second part of this middle period, 1715-1750, conditions were quite different from any period which preceded. There was no special menace to trade on the high seas, since England was no longer at war with France or Spain, and the number of pirates had been greatly reduced. The Indians were not a special trouble at this time, and it was after this period that the French and Indian War occurred. Upon the death of Queen Anne (1714), the Hanoverians ascended the throne. It was at this time that there was, to a certain degree, a neglect of the



colonies, and the abandoning of the attempt to apply quite so rigidly the laws of trade and navigation. Thus the colonies were allowed, in large measure, to administer their own affairs. The legislature was permitted to increase its power at the expense of the authority of the royal governor. While there were, as usual in the instructions to the governors, clauses indicating the royal disapproval of provincial manufactures, and the importance of a strict enforcement of the acts of trade, and similar matters, the colony was, however, in the main, not seriously disturbed. Thus, in the first part of this middle period, the colonists complained of the oppressive demands of the home government, while in the second they gained sufficient self-confidence to offer between 1750 and 1775 a defiant attitude to the renewal of the former oppressive methods.

In order to account in a careful scientific way for the Revolution, a thorough study of the actual administration of the colony must be made for the period indicated. As it is our purpose to furnish an account of the royal government in the colony, it will be necessary to trace the political and economic development from 1624, when the colony became royal. This does not involve a repetition of the works of the authors who have written on colonial administration in the seventeenth century, as will be seen by comparison. Valuable source material not used by these writers has been utilized in the preparation of this study. Since there remain but twenty-five years between the end of the middle period and the Revolution, it has been decided to include in this study the investigation for these years. In the treatment of each official, special attention will be given to the appointive power in order that it may be ascertained just how far royal authority extended in the governmental system of the colony. The chapter on the governor is apparently out of proportion with the other chapters, but since

the governor was the highest representative of royal authority in the colony and the one upon whom the British government depended for the conservation of its policy, a study of the royal government of the colony should give a full account of that official.

I desire to acknowledge my indebtedness to Professor John H. Latané of Johns Hopkins University, Professor Herbert L. Osgood of Columbia University, and Professor Charles M. Andrews of Yale University for helpful suggestions.

P. S. F.

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# CONTENTS

## CHAPTER I

### ENGLISH BACKGROUND

PAGE

|   |    |
|---|----|
| Change of colony of Virginia from administration by London    |    |
| Company to royal control . . . . .                            | 31 |
| Period of royal control . . . . .                             | 31 |
| Influence of Cromwell in the colony . . . . .                 | 32 |
| Loyalty of colonists to king. . . . .                         | 32 |
| Opposition of colonists to grant of Virginia to Arlington and |    |
| Culpeper . . . . .  | 33 |
| Loyalty at time of Stamp Act Congress . . . . .               | 34 |
| Loyalty to king, although boycotting British imports . . . .  | 35 |
| Privy Council; Committee for colonial affairs . . . . .       | 36 |
| Board of Trade appointed . . . . .                            | 37 |
| British officials concerned with the colony. . . . .          | 38 |
| Commissioners of the customs, lords of the treasury, lords of |    |
| the admiralty, receiver-general of the customs, comptroller-  |    |
| general of the customs, attorney-and-solicitor-general, aud-  |    |
| itor-general of the revenues . . . . .                        | 38 |
| Imperial control. . . . .                                     | 41 |
| King, various officials, committees, parliament, courts main- |    |
| tained control over colonies, no separate governmental        |    |
| machinery for colonies; long established governmental de-     |    |
| partments to supervise colonial administration . . . . .      | 41 |
| Board of Trade . . . . .                                      | 42 |
| Clearing house for colonial correspondence . . . . .          | 42 |
| Recommended to king in council persons for appointment to     |    |
| colonial offices . . . . .                                    | 42 |
| Examined colonial laws and made recommendation to king in     |    |
| council as to approval or veto . . . . .                      | 42 |
| Supervision of administration of British West Indies . . . .  | 43 |
| Requests and complaints of English merchants and trading      |    |
| companies made to Board . . . . .                             | 43 |
| Trade of England with foreign countries under supervision of  |    |
| Board . . . . .   | 43 |

|  | PAGE |
|--|------|
| Commissioners of the customs, lords of the treasury, lords of the admiralty, bishop of London consulted by Board . . . .   | 43   |
| Delay in referring colonial business to various departments of the British government . . . . .  | 43   |
| Periods of efficiency of the Board . . . . .   | 43   |
| Influence in making appointments. . . . .  | 44   |
| Purchase of office of secretary of Virginia . . . . .  | 45   |
| Purchase of office of auditor of Virginia . . . . .  | 45   |
| Merchants . . . . .  | 46   |
| Frequently before Board of Trade to give information and also to make requests . . . . .   | 47   |
| Influenced Board in regard to certain acts of assembly for levying tax on ships to pay for erection of lighthouse, and for imposing import duties on slaves and liquors. . . . . | 47   |
| Micajah Perry, a London merchant, various ways in which he influenced the colony of Virginia . . . . .   | 47   |
| Military supplies furnished Governor Dinwiddie by J. and C. Hanbury, London merchants; method of reimbursing them . . . .  | 48   |
| Governors instructed to render assistance to merchants. . . .  | 49   |
| Royal African Company encouraged by British government to furnish slaves to colonies . . . . .   | 49   |
| Assembly imposed duty on importation of slaves . . . . .   | 49   |
| House of Burgesses requested king to have slave trade discontinued. . . . .  | 50   |
| To encourage shipbuilding in Virginia, ships owned by colonists were exempted from certain duties. . . . .   | 51   |
| British merchants complained and this exemption was removed . . . . .  | 51   |
| Merchants endeavored to monopolize trade, the shipment of manufactures to the colony, and to check the production of tobacco. . . . .  | 52   |
| Petition known as "The Case of the Planters of Tobacco in Virginia" . . . . .  | 53   |
| Colonists forbidden to trade with any but British sugar colonies. Ships of war to enforce this provision seized some ships from Virginia . . . . .                               | 54   |
| Merchants seriously objected to accepting paper money of colony. Resolutions of Assembly and statements of governor concerning this. . . . .                                     | 55   |
| Merchants were influential in having acts of Parliament passed laying duties on certain articles imported into the colony. . . .   | 58   |



## CHAPTER II

PAGE

## THE GOVERNOR

|   |    |
|---|----|
| Appointment . . . . .   | 60 |
| President of the Council elected by Council . . . . .   | 60 |
| Governor (1609 to 1624) elected by London Company . . . . .   | 60 |
| Governor (1624 to 1775) appointed by the king, except (1652 to 1660) the period of the Protectorate. . . . .  | 60 |
| Governor-in-chief (1704 to 1768) remained in England . . . . .  | 60 |
| Lieutenant-governor was a royal appointee and not simply a deputy . . . . .   | 61 |
| Governor-in-chief could recommend but not appoint deputy. . . . .   | 61 |
| Instructions show that the office of governor-in-chief did not carry with it additional powers . . . . .  | 61 |
| Earl of Orkney, the first governor-in-chief, did not consider his office a sinecure but was of service to the colony in making explanations and recommendations to the Board of Trade . . . . . | 62 |
| Earl of Albemarle, successor of Earl of Orkney, although serving as ambassador to France, continued to co-operate with his lieutenant-governor . . . . .  | 64 |
| Earl of Loudoun, successor of Earl of Albemarle, commanded British troops in America; gave little attention to Virginia . . . . .   | 66 |
| Sir Jeffrey Amherst, successor of Earl of Loudoun, commanded British troops in America; gave little attention to Virginia . . . . .   | 67 |
| Governor. . . . .   | 67 |
| Commissioned under the great seal . . . . .   | 67 |
| Tenure during the king's pleasure. . . . .  | 68 |
| Instructions . . . . .  | 69 |
| By whom drafted . . . . .   | 69 |
| Increase in clauses . . . . .   | 69 |
| Policy of British government was uniform as indicated by instructions. . . . .  | 69 |
| Matters affecting every phase of the government and life of colony included in instructions . . . . .   | 71 |
| Governor reported regularly to Board of Trade, lords of treasury and commissioners of the customs on conditions in the colony . . . . .   | 72 |
| Governor not to leave colony without king's permission . . . . .  | 73 |
| Governor's salary and fees gradually increased, thus permitting him to live rather luxuriously . . . . .  | 74 |
| Salary of President of the Council when serving as governor . . . . .   | 80 |
| Governor not permitted to accept gifts, especially from Assembly, without royal approval . . . . .  | 81 |

|  | PAGE |
|--|------|
| The governors permitted to accept gifts . . . . .  | 81   |
| Motives of Assembly in bestowing these gifts . . . . .   | 83   |
| Interest of governor in trade; some opportunities for irregularities . . . . .                                     | 84   |
| Governor administered oath to councillors . . . . .  | 85   |
| More important officials appointed by governor . . . . .   | 85   |
| Governor's power of removal subject to review by home government . . . . .   | 86   |
| Salaries and fees regulated by governor . . . . .  | 87   |
| Land grants issued by governor and Council . . . . .   | 87   |
| Church affairs under general supervision of governor . . . . .   | 88   |
| Governor's power to pardon crimes and to remit fines and forfeitures. . . . .                                      | 89   |
| Relations with Council . . . . .   | 91   |
| Encroachment of governor upon Council in seventeenth century. . . . .  | 91   |
| Power of governor to suspend a councillor. . . . .   | 92   |
| Council regarded as an advisory board . . . . .  | 93   |
| Relations with Assembly . . . . .  | 93   |
| Gradually increasing power of Assembly . . . . .   | 94   |
| Governor instructed to supervise the Assembly. . . . .   | 94   |
| Governor's veto on legislation. . . . .  | 95   |
| Judicial system under jurisdiction of governor . . . . .   | 95   |
| Militia subject to authority of governor . . . . .   | 96   |
| British troops in colony temporarily subject to governor's order . . . . .   | 96   |
| Admiralty jurisdiction of governor extended beyond Virginia. . . . .   | 97   |
| British ships of war temporarily subject to governor's order. . . . .  | 97   |
| Guard ships cruising coast under authority of governor . . . . .   | 98   |
| Merchant ships subject to governor's authority. . . . .  | 98   |
| Financial condition of colony to be constantly supervised by governor and reported on to home government . . . . . | 99   |
| Diplomatic powers of governor usually exercised in regard to trade, military affairs and Indian affairs . . . . .  | 100  |
| Dignity of the governorship. . . . .   | 100  |
| Governor, the representative of the crown; difficulty of enforcing rigidly his instructions . . . . .              | 101  |
| Sir Francis Wyatt's first administration . . . . .   | 102  |
| Assembly apparently not called annually . . . . .  | 102  |
| Administration evidently quiet and satisfactory. . . . .   | 103  |
| Sir George Yeardley's administration . . . . .   | 103  |
| Administration very brief . . . . .  | 103  |
| Prosperity of colony—administration successful. . . . .  | 103  |
| Sir John Harvey's administration . . . . .   | 103  |

|  | PAGE |
|--|------|
| Dictatorial policy and unpopularity . . . . .  | 103  |
| Dispute with Maryland over the surrender of William Clay-<br>borne who had fled from Kent Island, Maryland . . . . .       | 104  |
| Council removed Harvey . . . . .   | 104  |
| Harvey reappointed by king. . . . .  | 104  |
| Colonists refused to support him; removal . . . . .  | 105  |
| Sir Francis Wyatt's second administration. . . . .   | 105  |
| Brief but successful term of office . . . . .  | 105  |
| Sir William Berkeley's first administration. . . . .   | 105  |
| Assembly protested against petition of Sir George Sandys to<br>Parliament for restoration of London Company . . . . .      | 105  |
| Loyalty of colony to crown . . . . .   | 105  |
| Charles II, the fugitive king, invited to Virginia. . . . .  | 105  |
| Resistance and surrender to commissioners sent by Cromwell;<br>Favorable terms of surrender . . . . .                      | 105  |
| Richard Bennett assumed governorship . . . . .   | 105  |
| Governorship during Protectorate (1652-1660) filled by vote of<br>House of Burgesses . . . . .                             | 105  |
| Sir William Berkeley's second administration . . . . .   | 106  |
| Elected governor by Assembly. . . . .  | 106  |
| Royalist reaction; power of Assembly reduced . . . . .   | 106  |
| English merchants favored; Episcopal church to be made su-<br>preme; suffrage restricted . . . . .                         | 106  |
| Colony granted to Arlington and Culpeper for thirty-one years;<br>strenuous opposition by colonists . . . . .              | 107  |
| Bacon's Rebellion: its causes and results . . . . .  | 107  |
| Berkeley recalled . . . . .  | 107  |
| Colonel Herbert Jeffreys's administration . . . . .  | 108  |
| Journal of House of Burgesses seized, and clerk fined and im-<br>prisoned . . . . .  | 108  |
| Policy somewhat negative, although royalist reaction checked<br>and treaties made with Indians . . . . .                   | 108  |
| Sir Henry Chicheley's administration . . . . .   | 108  |
| Administration comparatively satisfactory . . . . .  | 108  |
| Thomas, Lord Culpeper's administration. . . . .  | 108  |
| Appointed for life. Delayed to assume duties . . . . .   | 108  |
| Conciliatory spirit towards colonists on arrival . . . . .   | 109  |
| Salary and fees increased; Assembly made him a gift . . . . .  | 109  |
| Return to England, leaving Chicheley as deputy . . . . .   | 109  |
| Discontent due to low price of tobacco. . . . .  | 109  |
| Culpeper ordered to colony to check this growing discontent . . . . .  | 110  |
| Culpeper's arbitrary methods in raising price of tobacco, deal-<br>ing with plant cutters and dissolving Assembly. . . . . | 110  |

|  | PAGE |
|--|------|
| Robert Beverley, clerk of House, imprisoned and disfranchised<br>for refusing to surrender journal . . . . .   | 110  |
| Culpeper, for again leaving colony without permission and also<br>accepting gift from Assembly, was removed . . . . .  | 110  |
| Francis, Lord Howard of Effingham's administration . . . . .   | 110  |
| Antagonized colonists by continuing the arbitrary methods of<br>Culpeper in regard to plant cutters. . . . .   | 110  |
| Vetoed acts of Assembly to prevent his increasing his own fees   | 111  |
| Philip Ludwell sent by House of Burgesses to England to<br>petition for relief from dictatorial policy of the governor . .   | 111  |
| Fee for affixing seal discontinued by order of Privy Council. .  | 111  |
| Acts of Assembly repealed by proclamation of governor; King<br>supported him and instructed him to dissolve the Assembly;<br>Robert Beverley, clerk of House, was imprisoned, and dis-<br>qualified from holding any public office; journal and papers<br>of House seized. . . . . | 111  |
| Complaints of colonists continued . . . . .  | 111  |
| Howard recalled . . . . .  | 111  |
| Colonel Francis Nicholson's first administration . . . . .   | 112  |
| Colonists antagonistic at first . . . . .  | 112  |
| Postponed calling an Assembly . . . . .  | 112  |
| Favored erection of a college . . . . .  | 112  |
| Assembly voted him a gift. . . . .   | 112  |
| Sir Edmund Andros's administration . . . . .   | 112  |
| Kindly received by colonists. . . . .  | 113  |
| Encouraged cultivation of cotton and the attempts at manufac-<br>turing . . . . .  | 113  |
| Dictatorial power over church affairs and the Assembly . . .   | 113  |
| Undue emphasis of the royal prerogative. . . . .   | 113  |
| Andros removed . . . . .   | 113  |
| Sir Francis Nicholson's second administration . . . . .  | 113  |
| Full powers of governor . . . . .  | 113  |
| Proposes intercolonial co-operation . . . . .  | 113  |
| Disappointed in love affair. . . . .   | 113  |
| Commissary Blair and the clergy, the objects of his wrath . .  | 113  |
| Arbitrary policy checked by Council and Assembly. . . . .  | 113  |
| Pledged appropriation to New York . . . . .  | 113  |
| Colonel Robert Quarry's favorable account of colony; defense<br>of Nicholson in controversy with Council . . . . .   | 114  |
| General opposition to Nicholson; removal. . . . .  | 115  |
| Edward Nott's administration . . . . .   | 116  |
| Kindly received by colonists. . . . .  | 116  |
| First lieutenant-governor under governor-in-chief . . . . .  | 116  |



|   | PAGE |
|---|------|
| Revision of laws of colony. . . . .   | 116  |
| Appropriation by Assembly for governor's house. . . . .   | 116  |
| Vetoed certain laws . . . . .   | 116  |
| Brief but successful administration. . . . .  | 117  |
| Colonel Alexander Spotswood's administration . . . . .  | 118  |
| Right of <i>habeas corpus</i> assured . . . . .   | 118  |
| Appropriation for completing governor's house. . . . .  | 118  |
| Assembly refused to make large appropriations for expected<br>French invasion. . . . .  | 118  |
| Dissolution of Assembly for refusal to make appropriations<br>requested . . . . .   | 119  |
| Conflict with Council; charges preferred against him before<br>home government. . . . .   | 119  |
| Removal; opinions as to his administration . . . . .  | 120  |
| Hugh Drysdale's administration. . . . .   | 121  |
| Quiet administration; no events of importance . . . . .   | 121  |
| Opinions of Chalmers and Campbell as to executive ability of<br>Drysdale . . . . .  | 121  |
| Cordial relations with Council and House as indicated in ad-<br>dresses of Assembly and his speeches . . . . .                    | 122  |
| Dr. James Blair's favorable opinion of Drysdale . . . . .   | 123  |
| Address of Council and House to the king requesting that<br>Drysdale be returned to colony upon recovery of his health . . . . .  | 123  |
| William Gooch's administration. . . . .   | 124  |
| Council and House made him gifts; home government opposed<br>but finally consented to his accepting them. . . . .                 | 124  |
| Reason for disapproval of governor's acceptance of gifts . . . . .  | 125  |
| Campbell's criticism of Gooch. . . . .  | 125  |
| Gooch accompanied Virginia troops to Carthagenia; appropri-<br>ations for expedition . . . . .                                    | 125  |
| Virginia troops sent to aid Georgia against Spaniards . . . . .   | 126  |
| Appropriations for intended invasion of Canada. . . . .   | 126  |
| Treaty with Six Nations . . . . .   | 126  |
| Interested in education and Episcopal church . . . . .  | 126  |
| Resigned of own accord; returned to England . . . . .   | 127  |
| Prosperity and satisfaction in his administration . . . . .   | 127  |
| Robert Dinwiddie's administration . . . . .   | 127  |
| Formerly surveyor-general of the customs: contest with<br>Council then as to his privilege of membership in that body . . . . .   | 128  |
| Campbell's opinion as to opposition due to Dinwiddie's being a<br>Scotchman; other views. . . . .                                 | 128  |
| Pistole fee charged for affixing seal to land grants; much op-<br>position; Rev. William Stith's account of controversy . . . . . | 129  |

|  | PAGE |
|--|------|
| House made Dinwiddie a gift . . . . .  | 131  |
| Upon death of governor-in-chief, Dinwiddie endeavored to delay appointment of successor, in order to secure the salary . . . . .   | 132  |
| Opposition of Assembly seriously interfered with securing supplies for campaign against French . . . . .   | 132  |
| Resigned and returned to England. . . . .  | 132  |
| Endeavored to justify his conduct . . . . .  | 133  |
| Francis Fauquier's administration . . . . .  | 133  |
| Co-operated with Washington to bring French and Indian War to successful end . . . . .   | 133  |
| Loyal support of Assembly . . . . .  | 134  |
| Instructed to prevent speaker of House serving any longer as treasurer of colony; Fauquier's conciliatory policy won favor of colonists . . . . .  | 134  |
| Resistance to Stamp Act; Assembly dissolved for passing resolution. . . . .  | 134  |
| Assembly trusted him to defend frontier . . . . .  | 135  |
| Successful administration . . . . .  | 135  |
| Lord Botetourt's administration. . . . .   | 136  |
| First governor-in-chief to come to colony . . . . .  | 136  |
| Cordial reception; his speech; address of House. . . . .   | 136  |
| House opposed sending persons to England for trial; resolutions against acts of Parliament laying duties on imports; Assembly dissolved . . . . .  | 137  |
| Plan to boycott British manufactures; resolutions signed by men of influence; certain duties repealed . . . . .  | 138  |
| Friendly relations between governor and Assembly shown in appropriation for running boundary between colony and Cherokee Indians . . . . .   | 139  |
| Association for boycotting British goods until duties should be removed; governor held merchants responsible; Assembly sent circular letter to other colonies for co-operation . . . . . | 140  |
| Governor to suppress popular movement; to use force if necessary . . . . .   | 141  |
| Death of Botetourt; expression in Assembly of high esteem in which he was held; a statue erected by Assembly. . . . .  | 141  |
| Earl of Dunmore's administration . . . . .   | 142  |
| Unwilling to reside in Virginia; endeavored to exchange with governor of New York . . . . .  | 142  |
| Assembly showed friendly attitude; objected to fees for secretary to governor . . . . .  | 143  |
| Seeks large land grant for himself and also his secretary . . . . .  | 144  |

|  |     |
|--|-----|
| Worked harmoniously with Assembly; many acts signed; hesitated to enforce instructions rigidly especially in regard to paper money . . . . . | 144 |
| Prorogued Assembly; thus antagonized colonists. . . . .  | 145 |
| Committee of correspondence appointed; similar committees in other colonies . . . . .  | 145 |
| Recapitulation of governorship . . . . .   | 146 |
| In theory, governor had much power, in practice his actions were subject to constant review . . . . .  | 146 |
| Representative of the crown; royal will to be obeyed . . . . .   | 146 |
| Regular correspondence with British officials. . . . .   | 146 |
| Difficulty of filling governorship with satisfaction both to the home government and colony . . . . .  | 146 |
| Self-governing spirit in 18th century. . . . .   | 146 |
| Instructions in 18th century show policy of home government practically uniform . . . . .  | 147 |
| Royal governors not all disliked; dictatorial governors encountered opposition . . . . .   | 147 |
| Wyatt, Yeardeley and Berkeley (first administration) supported   | 147 |
| Harvey, Berkeley, Culpeper, and Howard were dictatorial and were removed. Andros while not as arbitrary was also removed . . . . .           | 147 |
| Jeffreys, Chicheley and Nicholson (first administration) had comparatively quiet and satisfactory administrations . . . .                    | 148 |
| Governors 1700-1775 . . . . .  | 148 |
| Three experienced great difficulty, Nicholson, Spotswood, and Dinwiddie: first two were removed; third resigned . . . .                      | 148 |
| Five, whose administrations were successful, Nott, Drysdale, Gooch, Fauquier, and Botetourt . . . . .  | 148 |
| Dunmore arrived when attitude of colonists was strongly anti-British . . . . .   | 148 |

## CHAPTER III

## THE COUNCIL

|  |     |
|--|-----|
| The Council under the London Company . . . . .   | 150 |
| Executive, legislative and judicial functions previous to 1624. . . .  | 151 |
| The Council appointed by king after 1624 . . . . .   | 152 |
| Influence in making appointments. . . . .  | 152 |
| Membership limited to men of wealth and influence . . . . .  | 153 |
| Oaths of councillors administered by governor . . . . .  | 154 |
| Appointment practically for life; governor had power of suspending; home government had power of removal . . . . . | 155 |

|   | PAGE |
|---|------|
| Number of councillors; quorum . . . . .   | 156  |
| Salary; gradually increased by authority of home government; paid out of revenue of two shillings per hogshead on exported tobacco . . . . .  | 157  |
| Privileges; exempted from taxation and muster, freedom from arrest; exempted from summon by writ . . . . .  | 159  |
| Opportunities for fraud . . . . .   | 159  |
| Most important offices monopolized by councillors . . . . .   | 159  |
| As judges they might decide their own cases. . . . .  | 160  |
| Irregularities in selling quit rent tobacco. . . . .  | 160  |
| Indian trade monopolized . . . . .  | 161  |
| Land speculation; holding large grants; getting possession of escheated land . . . . .  | 161  |
| Evasion of quit rents . . . . .   | 161  |
| Relations with governor. . . . .  | 161  |
| Recommended by governor; his advisory board . . . . .   | 162  |
| Governor not to disclose instructions to Council . . . . .  | 162  |
| Council gradually encroached upon executive functions. . . . .  | 164  |
| Council composed of most influential men; their support necessary to governor's success; their opposition caused removal of certain governors; Council sometimes combined with House against a governor . . . . . | 165  |
| Legislative powers of Council . . . . .   | 167  |
| Constituted upper house of legislature . . . . .  | 167  |
| Council influenced very decidedly course of legislation . . . . .   | 167  |
| Governor called, prorogued and dissolved Assembly on advice of Council . . . . .  | 168  |
| Council to serve as check on House . . . . .  | 169  |
| All legislation especially money bills originated in House. . . . .   | 169  |
| Council usually allied with House in 18th century . . . . .   | 169  |
| Judicial powers of Council. . . . .   | 170  |
| Governor and Council constituted the General Court . . . . .  | 170  |
| Council and church affairs. . . . .   | 170  |
| Episcopal church to be made supreme . . . . .   | 170  |
| Concessions made to dissenters . . . . .  | 170  |
| Position of Catholics . . . . .   | 171  |
| Governor and Council had petitions concerning church affairs referred to them . . . . .   | 172  |
| Recapitulation of the Council . . . . .   | 173  |
| Advisory board to the governor; gradually encroached upon executive functions . . . . .   | 173  |
| Council and House co-operated; gradually House encroached upon both governor and Council. . . . .   | 174  |

|  | PAGE |
|--|------|
| Council monopolized important offices. . . . .   | 174  |
| British government knew of dominating influence of Council;<br>complaints by Council and against Council did not cause<br>home government to check its power . . . . . | 174  |
| Council composed of aristocracy of colony . . . . .  | 174  |
| Supported by colonists . . . . .   | 174  |
| Royal appointees, but interests with colonists . . . . .   | 174  |
| <b>President of the Council.</b> . . . .   | 175  |
| Governor presided over Council; senior councillor presided<br>and also filled governorship if governor could not serve. . .  | 175  |
| Presidents of Council; number, influence, salary, efficiency .   | 176  |
| <b>Commissary of the Bishop of London</b> . . . . .  | 178  |
| Appointment of Rev. James Blair . . . . .  | 178  |
| General supervision of clergy and presidency of William and<br>Mary College. . . . .   | 179  |
| Membership in Council greatly increased power . . . . .  | 180  |
| Relations with governor; governor could suspend but not re-<br>move; controversies between Commissary Blair and Andros,<br>Nicholson and Spotswood. . . . .            | 180  |
| Salary as commissary, councillor and college president . . .   | 180  |
| <b>Solicitor of Virginia Affairs</b> . . . . .   | 181  |
| Agent of the colony in London; early temporary appoint-<br>ments; regular agent of governor and Council after 1680 . .   | 181  |
| Appointed by governor with advice of Council . . . . .   | 182  |
| House of Burgesses occasionally sent special agent; after 1759<br>House had regular agent . . . . .  | 182  |
| Relations of the two agents; their respective duties. . . . .  | 183  |
| Expenses paid by colony . . . . .  | 185  |
| Salaries of the two agents . . . . .   | 186  |
| Men in London usually selected as agents . . . . .   | 187  |
| Large funds handled by them . . . . .  | 137  |
| Agent of House expressed dissatisfaction of colonists. . . .   | 188  |

## CHAPTER IV

### THE HOUSE OF BURGESSES

|  |     |
|--|-----|
| First legislature met in 1619; Home government not favorable to<br>popular assembly; influence of assembly increased only grad-<br>ually . . . . . | 189 |
| Suffrage based on property qualification . . . . .   | 190 |
| Disfranchisement of Catholics, negroes and Indians . . . .   | 191 |
| Membership and organization . . . . .  | 191 |
| Speaker; appointment, power and influence . . . . .  | 192 |



|   | PAGE |
|---|------|
| Clerk; arbitrarily dealt with by certain governors; appointed by governor; salary paid by House . . . . .   | 192  |
| Frequency of sessions; annual meeting interfered with by dictatorial governors; biennial sessions adopted; prorogation. . .   | 193  |
| Salary; members paid by counties and House; speaker's income rather large; speaker also filled office of treasurer; clerk's salary; clerk of General Assembly's salary; salaries of sergeant-at-arms, door-keeper, chaplain, clerks of committees, and public printer . . . . . | 195  |
| Royal supervision of legislation . . . . .  | 198  |
| All laws to be approved by home government . . . . .  | 198  |
| Legislative journals examined by home government . . . . .  | 198  |
| British officials concerned with colonial laws. . . . .   | 199  |
| Governor to enforce strictly instructions as to legislation . . .   | 199  |
| " suspending clause " to certain laws; increasingly used . . .  | 200  |
| Examination of laws delayed; laws disallowed . . . . .  | 201  |
| Judicial functions of House . . . . .   | 202  |
| Appeal from General Court to Assembly. . . . .  | 203  |
| Appeal from General Court to king in council . . . . .  | 203  |
| Court of claims . . . . .   | 203  |
| Relation of House to church affairs . . . . .   | 204  |
| Petitions to have vestry dissolved, and to dispose of the glebe. .  | 204  |
| Relations of House to governor . . . . .  | 204  |
| Power of governor over House especially in seventeenth century .  | 204  |
| Council co-operated with governor in opposing House in seventeenth century. . . . .   | 205  |
| Governor sat with Council as upper house . . . . .  | 206  |
| Proroguing and dissolving assembly rested with governor . . .   | 206  |
| Veto power of governor. . . . .   | 207  |
| Governor influenced legislation through appointive power . . .  | 208  |
| Governor's dependence upon House for appropriations . . . .   | 209  |
| Treasurer of colony appointed by House; speaker appointed treasurer; home government failed to separate these offices . .   | 212  |
| Efficiency of House as a provincial body . . . . .  | 213  |

## CHAPTER V

## THE LAND SYSTEM AND ITS OFFICIALS

|   |     |
|---|-----|
| Land System . . . . .   | 215 |
| System of acquiring land by " head right " abused . . . . .   | 215 |
| System of acquiring land by payment of fee to secretary . . . | 215 |
| Large tracts held by men of influence . . . . .               | 216 |
| Council criticised for monopolizing land . . . . .            | 216 |

|  | PAGE |
|--|------|
| Effort of home government to prevent monopoly by requiring land-owners to live upon their land, failed . . . . .   | 217  |
| Effort to restrict number of acres to one hundred for each colonist failed. . . . .  | 217  |
| Effort to compel cultivation of land failed . . . . .  | 217  |
| Surveyor-general . . . . .   | 218  |
| Appointment; first, by governor, then by home government, and then by William and Mary College; governor and Council had certain supervisory power . . . . . | 218  |
| County surveyors, appointed by surveyor-general; instructions received from governor and Council; annual report to auditor                                   | 218  |
| Salary and fees of surveyor-general and surveyors. . . . .   | 219  |
| Commissioners to run dividing line between two colonies, or to survey large tracts of land . . . . .   | 220  |
| Escheators . . . . .   | 221  |
| System by which land lapsed to king . . . . .  | 221  |
| Method of acquiring lapsed land through the escheators upon governor's warrant . . . . .   | 221  |
| Escheators; number, appointment, fees . . . . .  | 222  |
| Persistence of English custom. . . . .   | 223  |
| Secretary. . . . .   | 223  |
| Appointment; power of governor . . . . .   | 223  |
| Seal of colony kept by secretary; records kept in his office of land grants, official correspondence, copies of various public papers, fees . . . . .        | 224  |
| Irregularities in secretary's office . . . . .   | 226  |
| Clerks of county courts and General Court appointed by secretary . . . . .   | 226  |
| Power and influence of secretary; influence upon House through county court clerks . . . . .   | 227  |
| Member of Council; appointed naval officer and collector . . .   | 228  |
| Served as acting governor. . . . .   | 228  |
| Lord-chancellor and secretary compared . . . . .   | 229  |

## CHAPTER VI

### THE FINANCIAL SYSTEM AND ADMINISTRATION

|  |     |
|--|-----|
| Methods of raising money; duties on trade, land and poll taxes . .   | 230 |
| Duties on exported tobacco paid in colony and England; two shillings per hogshead paid in colony; amount; how appropriated . . . . . | 230 |
| Castle duty; amount and how appropriated . . . . .   | 232 |
| Fines and forfeitures . . . . .  | 232 |

|  | PAGE |
|--|------|
| Total of revenues for support of government . . . . .  | 233  |
| Quit rent paid in tobacco, later also in money . . . . .   | 233  |
| Amount of collections; usually sent to England; occasionally<br>used in colony for governmental expenses . . . . .   | 233  |
| Plantation duty; amount; granted to the college . . . . .  | 237  |
| Duty on skins and furs exported; amount; granted to college .  | 237  |
| Duty on liquors imported; amount; granted to college . . . .   | 238  |
| Duty on slaves imported; amount; appropriated to government  | 238  |
| Duty on servants; amount; used for governmental expenses. .  | 238  |
| Neglect and fraud connected with revenues. . . . .   | 239  |
| Instructions to governors to prevent; acts of assembly to<br>prevent. . . . .  | 241  |
| Public levy; laid by assembly; amount; how appropriated . .  | 242  |
| County levy; laid by justices of peace; how appropriated . .   | 243  |
| Parish levy; laid by vestry; how appropriated. . . . .   | 243  |
| Tithables; total amount of the three poll taxes . . . . .  | 243  |
| Collectors. . . . .  | 245  |
| Importance of tobacco trade; register kept of all exports,<br>especially tobacco; keeper of register; appointment; fees . .  | 245  |
| Collectors appointed by commissioners of the customs; sur-<br>veyor-general of customs had supervision; power of governor  | 247  |
| Offices of collector and naval officer combined; later separated;<br>districts of each; number of each . . . . .   | 248  |
| Collectorships for a time monopolized by councillors; oppor-<br>tunity for fraud . . . . .   | 248  |
| Deputies of collectors; unsatisfactory; governors to prevent<br>collectors having deputies . . . . .   | 249  |
| Collectors received certain import and export duties; expected<br>to prevent illegal trade . . . . .   | 250  |
| Fees; total income . . . . .   | 250  |
| Examination of collectors' accounts . . . . .  | 251  |
| Irregularities and fraud . . . . .   | 252  |
| Naval Officers . . . . .   | 253  |
| Appointment; royal authority; power of governor . . . . .  | 253  |
| Council for a time monopolized these positions. . . . .  | 253  |
| Number and districts . . . . .   | 254  |
| Salaries; irregularities. . . . .  | 254  |
| Duties; entering and clearing ships; took oath of master of ship<br>to obey trade laws, also bonds of masters of ships; took charge<br>of prize ships; furnished governor and home government with<br>list of all ships, and account of imports and exports; swore<br>to their accounts before governor, after approval by receiver-<br>general and auditor; security given; fraud . . . . . | 254  |

|   | PAGE |
|---|------|
| Surveyor-General of the Customs . . . . .   | 257  |
| Appointment by commissioners of the customs. . . . .  | 257  |
| Jurisdiction over several colonies . . . . .  | 257  |
| Member of Council . . . . .   | 258  |
| Reports sent to Board of Trade, custom house and treasury. . . . .  | 258  |
| Supervision over collectors and naval officers. . . . .   | 259  |
| Valuable service in examining books of revenue officers, explaining colonial conditions to Board of Trade and preventing illegal trade and piracy . . . . . | 259  |
| Salary . . . . .  | 260  |
| Searchers. . . . .  | 260  |
| Appointed by surveyor-general of the customs . . . . .  | 260  |
| To search ships for goods unlawfully concealed. . . . .   | 260  |
| Co-operation in preventing illegal trade . . . . .  | 261  |
| Salary . . . . .  | 261  |
| Comptrollers of the Customs . . . . .   | 261  |
| Appointed by commissioners of the customs . . . . .   | 261  |
| To supervise collectors, naval officers . . . . .   | 261  |
| Salary and fees . . . . .   | 262  |
| Searched ships on authority of writs of assistance. . . . .   | 262  |
| Writs of assistance refused by General Court . . . . .  | 262  |
| Auditor. . . . .  | 263  |
| Appointment under royal authority . . . . .   | 263  |
| Governor might suspend but not remove him . . . . .   | 263  |
| Auditorship held by councillors . . . . .   | 264  |
| Auditor performed duties of receiver-general; irregularities; offices separated. . . . .  | 264  |
| Examined revenue accounts; swore to his reports and forwarded them to lords of treasury . . . . .   | 265  |
| Disposition of quit rent tobacco . . . . .  | 266  |
| Salary and fees . . . . .   | 266  |
| Receiver-General . . . . .  | 267  |
| Separated from auditorship . . . . .  | 267  |
| Appointed by royal authority . . . . .  | 267  |
| Bond furnished . . . . .  | 268  |
| Councillors monopolized this office. . . . .  | 268  |
| Received quit rents and all revenues not paid to treasurer. . . . .   | 268  |
| Disbursements by order of governor in council for governmental expenses; quit rents by royal order . . . . .  | 269  |
| Difference between colonial and sterling money; scarcity of money; coin and paper currency. . . . .   | 269  |
| Salary . . . . .  | 271  |
| Collectors of the Duty on Skins and Furs . . . . .  | 271  |

|   | PAGE |
|---|------|
| Appointed by governor . . . . .   | 271  |
| Accounted with the college for this revenue . . . . .   | 271  |
| Evasion of this duty on frontiers. . . . .  | 272  |
| Fees . . . . .  | 272  |
| Collectors of the Duty on Liquors . . . . .   | 272  |
| Appointed by governor . . . . .   | 272  |
| Accounted with treasurer of colony . . . . .  | 272  |
| Evasion of this duty at ports and on frontier . . . . .   | 273  |
| Fees . . . . .  | 273  |
| Collectors of the Duty on Slaves. . . . .   | 273  |
| Appointed by governor . . . . .   | 273  |
| Accounted with treasurer of colony . . . . .  | 273  |
| Evasion of this duty at ports and frontier. . . . .   | 274  |
| Method of selling slaves. . . . .   | 274  |
| Fees . . . . .  | 274  |
| Collectors of the Duty on Servants . . . . .  | 274  |
| Appointed by governor . . . . .   | 274  |
| Accounted with treasurer of colony . . . . .  | 274  |
| Fees . . . . .  | 274  |
| Treasurer. . . . .  | 275  |
| Appointed by royal authority; after 1691, by Assembly . . . .   | 275  |
| Usually a councillor until 1691, thereafter appointee of House .  | 275  |
| Speaker filled office of treasurer for sixty-seven years . . . .  | 276  |
| Treasurer received duties on liquors, servants and slaves and<br>the public levy; disbursements on authority of assembly. . . | 277  |
| Treasury notes issued by him . . . . .  | 277  |
| Salary; bond furnished . . . . .  | 278  |
| Inspectors of Tobacco. . . . .  | 278  |
| Quantities of tobacco shipped to England . . . . .  | 279  |
| Appointed by governor . . . . .   | 279  |
| Salary . . . . .  | 280  |
| Inspector's notes used as legal tender . . . . .  | 281  |
| Ineligible to membership in House . . . . .   | 281  |
| Pilots. . . . .   | 283  |
| Appointed by governor . . . . .   | 283  |
| Fees for piloting ships . . . . .   | 283  |
| Postmaster . . . . .  | 284  |
| Objection to postal system; later support. . . . .  | 284  |
| Rates and regulations . . . . .   | 285  |
| Irregularities . . . . .  | 286  |
| Supervision of ferries . . . . .  | 287  |
| Governmental expenses . . . . .   | 288  |
| Value of colonies to British government . . . . .   | 288  |



|  | PAGE |
|--|------|
| Wealth and importance of Virginia . . . . .  | 288  |
| Governor's salary paid by colonists . . . . .  | 289  |
| Colony defended itself against Indians . . . . .   | 290  |
| Assistance rendered New York, also British ships of war. . .   | 291  |
| Military supplies paid for out of quit rents . . . . .   | 292  |
| Assistance rendered North Carolina and South Carolina . . .  | 292  |
| Appropriations for Carthagera campaign and intended invasion of Canada . . . . .                                   | 293  |
| British exchequer to be reimbursed . . . . .   | 296  |
| Funds advanced to Dinwiddie . . . . .  | 296  |
| Parliamentary grants to colonies for French and Indian War .   | 298  |
| Expense borne by Virginia in French and Indian War . . . .   | 299  |
| Usual expenses of Virginia . . . . .   | 300  |
| Quit rents used to make up deficit . . . . .   | 301  |
| Value of Virginia to England in regard to imports, exports and revenue; colony more than self-supporting . . . . . | 302  |
| Efficiency of the Financial System. . . . .  | 303  |
| Revenues with quit rents sufficient to meet needs of colony. .   | 304  |
| System of provincial revenues . . . . .  | 304  |
| Summary of royal and provincial officials . . . . .  | 305  |
| Financial system adequate for expenses of colony. . . . .  | 306  |

## CHAPTER VII

### THE JUDICIAL SYSTEM AND ADMINISTRATION

|  |     |
|--|-----|
| Appeals from General Court to Assembly; later from General Court to king in council. . . . .                       | 307 |
| General Court composed of councillors; jurisdiction. . . . .   | 307 |
| Court of oyer and terminer; members and jurisdiction . . . .   | 309 |
| Magistrate's court. . . . .  | 309 |
| Vice-admiralty court . . . . .   | 309 |
| Governor and Council had general supervision of judicial affairs. .  | 310 |
| Appeals to king in council; committee of Privy Council for hearing appeals, efficiency of plan questioned. . . . . | 310 |
| Sheriffs. . . . .  | 312 |
| Appointed by governor . . . . .  | 313 |
| Ministerial officer of county court . . . . .  | 313 |
| Collected quit rents, public, county and parish levies . . . .   | 313 |
| Agent of governor in publishing orders . . . . .   | 314 |
| Fees; fraud; deputies . . . . .  | 315 |
| Justices of the Peace . . . . .  | 317 |
| Appointed by governor . . . . .  | 317 |
| Ministerial and judicial officials of the county . . . . .   | 317 |

|  | PAGE |
|--|------|
| Fees . . . . .   | 318  |
| Constables . . . . .   | 318  |
| Appointed by county court . . . . .  | 318  |
| Ministerial officer of county court . . . . .  | 319  |
| Fees . . . . .   | 319  |
| Coroners . . . . .   | 319  |
| Appointed by Governor . . . . .  | 320  |
| Ministerial and judicial officers. . . . .   | 320  |
| Fees . . . . .   | 320  |
| Attorney-General. . . . .  | 321  |
| Royal appointment; later by governor . . . . .   | 321  |
| Various duties largely of legal nature . . . . .   | 322  |
| Salary and fees . . . . .  | 323  |
| Agent for prizes . . . . .   | 324  |
| Development of vice-admiralty courts . . . . .   | 325  |
| Officers of vice-admiralty court . . . . .   | 325  |
| Jurisdiction and fees of vice-admiralty court . . . . .  | 326  |
| Appointment of agents for prizes . . . . .   | 326  |
| Fees . . . . .   | 327  |
| Receiver-General of the Royal Rights and Perquisites of the Ad-<br>miralty . . . . .   | 327  |
| Appointed by lords of the treasury. . . . .  | 328  |
| Admiralty dues and pirates' goods received . . . . .   | 328  |
| Collectors of the Six Pence per Month from Seamen's Wages for<br>the Royal Hospital at Greenwich . . . . .                     | 328  |
| Appointed by commissioners subject to the instructions of the<br>lords of the admiralty . . . . .                              | 328  |
| Commissioners for Trying Pirates . . . . .   | 329  |
| Trading with pirates . . . . .   | 329  |
| Difficulty of exterminating them. . . . .  | 330  |
| Trial by special court of oyer and terminer; later examined in<br>vice-admiralty court and sent to England for trial . . . . . | 331  |
| Commissioners for trying pirates; instructions, jurisdiction;<br>successful in suppressing piracy . . . . .                    | 332  |
| Efficiency of the Judicial System. . . . .   | 334  |
| Criticism of General Court and governor's relation thereto . . . . .   | 334  |
| Governor's appointive power in regard to judicial system. . . . .  | 334  |
| Royal appointees and those appointed by governor . . . . .   | 335  |
| Appeals to king; delay in reviewing cases . . . . .  | 335  |
| Administration of justice generally satisfactory . . . . .   | 335  |

## CHAPTER VIII

PAGE

## THE SYSTEM OF DEFENSE

|  |     |
|--|-----|
| Militia; composition, exemptions, cost of supplies refunded British government, officers appointed by governor . . . . . | 336 |
| County lieutenant appointed by governor. . . . .   | 338 |
| Adjutant-general of musters, a royal appointee . . . . .   | 338 |
| Relation of governor and Council to militia . . . . .  | 339 |
| Indians. . . . .   | 339 |
| Number in colony; relation of governor and Council thereto; tribes paying tribute; education . . . . .                   | 340 |
| Indian policy of British government. . . . .   | 342 |
| Friendship of Indians; fur trade; treaties; presents . . . . .   | 342 |
| Superintendent of Indian affairs appointed by king and paid out of royal treasury . . . . .                              | 343 |
| Governor co-operated with superintendent . . . . .   | 344 |
| Superintendent's relations with Assembly regarding treaties and boundaries . . . . .                                     | 344 |
| Reports fully to home government. . . . .  | 346 |
| Expense of negotiating treaties . . . . .  | 347 |
| Indian trade . . . . .   | 348 |
| Interpreter for the Indians . . . . .  | 349 |
| Appointed by Assembly, later by governor. . . . .  | 350 |
| Need of official interpreter and compensation. . . . .   | 351 |
| Intercolonial military relations . . . . .   | 351 |
| Several instances of aiding other colonies and the British government in troops and appropriations . . . . .             | 352 |
| Military system of colony sufficient except in great emergency . .   | 353 |

## CONCLUSION

|   |     |
|---|-----|
| Effort to improve the personnel of officials . . . . .          | 355 |
| Officials did not live at seat of government. . . . .           | 355 |
| Complaints against officials . . . . .                          | 356 |
| Royal officials; number, appointment, efficiency . . . . .      | 358 |
| Provincial officials: number, appointment, efficiency . . . . . | 360 |
| Governor . . . . .  | 361 |
| Power in theory and in practice . . . . .                       | 362 |
| Comparison of successful governors with others . . . . .        | 362 |
| Instructions, and difficulty of rigid enforcement . . . . .     | 363 |
| Council. . . . .  | 364 |
| Power in theory and in practice . . . . .                       | 365 |
| Intermediate position of Council. . . . .                       | 366 |
| Gradually became provincial. . . . .                            | 366 |

|   | PAGE |
|---|------|
| Judicial system greatly influenced by governor and Council. . . . | 366  |
| Military system rendered valuable service . . . . .               | 367  |
| Financial system . . . . .  | 367  |
| Revenues, royal and provincial . . . . .                          | 368  |
| Colony was self-supporting . . . . .                              | 368  |
| Evasion of the revenues . . . . .                                 | 368  |
| English merchants had much influence in colonial affairs. . . .   | 369  |
| House of Burgesses . . . . .                                      | 369  |
| Gradually increased in power . . . . .                            | 370  |
| Control of appropriations . . . . .                               | 371  |
| Resistance to oppressive royal authority . . . . .                | 371  |
| BIBLIOGRAPHY . . . . .  | 373  |
| INDEX . . . . .   | 389  |

## CHAPTER I

### ENGLISH BACKGROUND

ON June 26, 1624, when the charter of the colony was annulled, Virginia became a royal province. Alleging as his justification the maladministration of the London Company, but really prompted by a selfish motive and with the intent of destroying political liberalism, James I brought the colony under his control, and on August 26, 1624, appointed Sir Francis Wyatt, already serving under the London Company, and twelve councillors to assume control of the government, subject to royal orders. There seems to have been at first some dissatisfaction at the change from the former administration to that of direct royal government, although, with the exception of permitting the calling of an assembly, it had been rather severe and arbitrary. During the first twenty years following this change attempts were made to restore the power of the company, but they were defeated by the vigilance of the governor, the Council, and the General Assembly, all of which authorities were opposed to a return to a proprietary form of government.<sup>1</sup>

Virginia continued as a royal province from 1624 to 1775, with the exception of the period of eight years 1652-1660, covered by the Protectorate. The colonists, under the leadership of Berkeley, did not acknowledge Cromwell until forced to do so by the commissioners supported by troops

<sup>1</sup> A. Brown, *The First Republic in America*, pp. 588-9, 601-3, 611, 641; *Virginia Gazette*, April 21, 1774; *Virginia Historical Register*, vol. i, p. 153; J. Winsor, *Narrative and Critical History of America*, vol. iii, pt. i, p. 146.

sent for this purpose. The Assembly declared that all those who defended the "late traitorous proceedings" in England should be considered accessories to the death of the king, and that those who questioned the rights of Charles II in Virginia would be deemed guilty of treason. And even when, in 1650, an act of Parliament was passed to compel the submission of the colony, the Assembly resolved to maintain its allegiance to the crown.<sup>1</sup> Although the colony was compelled to surrender, still the government which was established was practically uninfluenced by Cromwell and was in the hands of the colonists.<sup>2</sup> There were, however, no attempts, after acknowledging the protectorship of Cromwell, to disown that allegiance. This was due in part, no doubt, to the fact that the colony was unmolested by Cromwell, and that the House of Burgesses controlled the appointment of the governor and the Council and really administered the affairs of the colony. Although Virginia seemed to have changed very quickly from stanch opposition to quiet submission to the rule of Cromwell, still the people were sincerely loyal to the crown. No doubt the unusually favorable terms of the surrender, and the fact that Cromwell left the colony to administer its own government without interference from England, accounted for this. Information in regard to the communication between the colony and England shows that the colony enjoyed a marked degree of independence.<sup>3</sup> Since the governors were elected by the House of Burgesses and the people were thus permitted to control the governorship and the other offices of the colony, and also enjoyed free trade, it is not strange

<sup>1</sup> W. W. Hening, *Statutes at Large*, vol. i, p. 359; *Virginia Magazine of History and Biography*, vol. i, p. 78.

<sup>2</sup> Hening, *op. cit.*, vol. i, p. 546; C. M. Andrews, *British Committees, Commissions, and Councils of Trade and Plantations, 1622-1675*, Johns Hopkins University Studies, ser. xxvi, nos. 1-3, p. 37.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. xviii, pp. 44-57, 151-158, 290-291.



that there was little opposition to Cromwell.<sup>1</sup> The loyalty of the colony to the crown was very clearly shown during the years immediately after the Restoration in 1660.<sup>2</sup> This very pronounced loyalty continued until 1673, when Charles II granted the colony for thirty-one years to two of his favorites, Arlington and Culpeper. The opposition of the colonists to this unusual grant, and their effort to have the king revoke it and thus to relieve them from so arbitrary a system which had been placed upon them without their consent, is the first indication of a general dissatisfaction as to royal administration.<sup>3</sup> The restoration of the Stuarts was followed in Virginia by a period in which an arbitrary king, represented by an equally arbitrary governor, conserved the spirit of reaction, until conditions were such that a revolution (Bacon's Rebellion, 1676) was precipitated.

There were from time to time expressions on the part of the colonists as to their disapproval of the policy of the home government, but generally speaking the colony was quite loyal. Even so late as 1766, after the Stamp Act had been passed, the relation of Fauquier to the burgesses and their addresses to him and the references to the crown, indicate that the colony was still loyal.<sup>4</sup> The *Virginia Gazette* of June 20, 1766, gives what may be taken as an expression

<sup>1</sup> When royal government was reëstablished, Berkeley was elected March 23, 1660, by the Assembly, but was not commissioned by the king until July 31, 1660.

<sup>2</sup> With the triumph of Parliament and the execution of Charles I. many loyalists fled to Virginia. This emigration continued during the Commonwealth and the Protectorate, until the population of the colony was increased from about fifteen thousand to about forty thousand in 1670.

<sup>3</sup> When Harvey was "thrust out of his government" by the Council in 1635, with the general approval of the colonists, there was no expression, so far as ascertained, of dissatisfaction in regard to royal administration although he was reappointed by the king.

<sup>4</sup> *Journal House of Burgesses, 1766-1769*, pp. 12, 23, 26, 189.

of the attitude of the colonists towards the repeal of the Stamp Act, and the effect of this upon their relation to the home government: "The universal pleasure and satisfaction it gives that all differences between the mother country and her colonies are so happily terminated, was manifested here by general illumination and a ball, and elegant entertainment at the Capitol." The governor, the Council, and other representative men were present and all drank "loyal and patriotic toasts." This action was evidently sincere, although the Stamp Act had been strenuously resisted in the colony. An address of the burgesses to Fauquier (November 12, 1766) showed the attitude of the legislature towards the British government soon after the repeal of the Stamp Act:

We are so convinced of an immediate connection between Great Britain and the colonies, that we cannot but wish that no future accident may ever interrupt that union, so essential to the well being of each of them; and as we hope we have reason now to conclude that the Parliament of Great Britain (from the instance lately given in the repeal of the Stamp Act, and the several laws passed in favor of the trade of North America) was actuated by the true principles of fellow subjects with us, we cannot but wish that the grateful harmony of an indulgent parent and dutiful children may constantly subsist between us.<sup>1</sup>

Even in 1769, when the burgesses passed resolutions advising the colonists, on account of the state of trade and the debts already owed the British merchants, to be "frugal" in the use of British manufactures, it seems that this policy was adopted to secure what they considered just treatment. The purpose as stated in the resolutions was that the British merchants and manufacturers would, "from motives of interest, friendship and justice, endeavor to have the

<sup>1</sup> *Journal House of Burgesses, 1766-1769*, p. 23.

grievances of the colonists removed." After the passage of these resolutions, toasts were drunk by the burgesses to the king, to the royal family, to the governor, and to a "speedy and lasting union between Great Britain and her colonies," which was followed by another to the "constitutional British liberty in America, and all true patriots, the supporters thereof."<sup>1</sup> These resolutions were provoked by acts of Parliament imposing duties on certain articles. There was nothing of a revolutionary motive in them, for the colonists were seeking only their rights as British subjects, and did not desire to withdraw their allegiance from the crown. The plan of boycotting British goods, with the hope of thereby securing the repeal of the acts of Parliament laying certain duties for revenue, was for a few months executed. On June 22, 1770, an association was formed for this purpose by certain members of the House of Burgesses and some of the merchants, especially those in and around Williamsburg. The resolutions specifying the grievances of the colonists and the purposes of those who were members of the association bore two hundred and twenty-seven signatures of some of the most influential men in the colony.<sup>2</sup> The opening paragraph contained the following words: "We his Majesty's most dutiful and loyal subjects of Virginia, declaring our inviolable and unshaken fidelity and attachment to our gracious sovereign . . . ." Within six months the effort to create interest in this association throughout the colony had failed, thus showing the desire of the colonists to remain loyal to the crown.<sup>3</sup>

Before studying the details of the administration of the

<sup>1</sup> *Journal House of Burgesses*, Intro., pp. 39-43.

<sup>2</sup> *Ibid.*, 1770-1772, Intro., pp. 27-30; Some of the influential men were: Peyton Randolph, Edmund Pendleton, Richard Henry Lee, Thomas Jefferson, George Washington, Benjamin Harrison, John Blair, Francis Lightfoot Lee, John Page, Jr.

<sup>3</sup> *Ibid.*, p. 31.

government of the colony, it would be well to consider briefly the officials and others in England who exerted much influence over those who actually filled the offices in Virginia. From 1624 to 1643 the committee of the Privy Council and other special commissions, appointed to supervise colonial affairs, were appointed out of a desire for more efficient imperial control. From 1643 to 1660 Parliament had general supervision of the colonies and appointed the commissions of trade. Before 1660, however, the colonies did not play a conspicuous part in English affairs, and comparatively not a great deal of attention was given to them. But under Charles II there was adopted a definite colonial policy, the pursuance of which is regarded as an essential part of England's greatness.<sup>1</sup> It was the desire that the colonies should be considered as composed of one commonwealth, under the direct supervision of the king.<sup>2</sup> In reality, however, the authority known as the king in council was represented by a standing committee of the Privy Council.<sup>3</sup> After 1660, and to some extent previous to that date, the management of trade and plantations was placed in the hands, first of special boards, and afterwards of these committees of the Privy Council.<sup>4</sup> While the king, who really did not act independently of the Council, left colonial affairs to the Council, still he had some part in disposing of them, certainly so far as signing certain commissions and warrants was concerned.<sup>5</sup> Many matters sent to

<sup>1</sup> *Acts of the Privy Council, Colonial, 1613-1680*, pref., p. 17.

<sup>2</sup> C. M. Andrews, *Colonial Self-Government*, pp. 22, 23; J. A. Doyle, *English Colonies in America*, vol. i, p. 314.

<sup>3</sup> G. L. Beer, *The Origins of the British Colonial System, 1578-1660*, pp. 310-313.

<sup>4</sup> Andrews, *op. cit.*, pp. 22, 23.

<sup>5</sup> The "sign manual" of the king was not as formal and not as significant as the "great seal of Great Britain", which was the final authentic expression of the royal will." Sir W. R. Anson, *The Law and Custom of the Constitution*, vol. ii, p. 44.

him were, however, either returned to the committee of the Privy Council or forwarded to the special department of the government service to which the matter in question pertained, such as the admiralty office, the custom house, or the treasury. While the king did not in many cases personally pass upon matters concerning the administration of his government, still he, through his deputies, the lords of the admiralty, the commissioners of the customs, the lords of the treasury, and especially the secretaries of state, and others, was administering his office. These officials acting as his secretaries were in law the king.<sup>1</sup>

In 1675 a new standing committee of the Council composed of twenty-four members, who were known as the Lords of Trade and Plantations, had general supervision of colonial affairs. In 1688 the whole Privy Council was a standing committee for trade and plantations.<sup>2</sup> But in 1696 a separate Board of Trade and Plantations was appointed for colonial affairs. The members of this body were frequently referred to as the Lords of Trade, although the name Board of Trade was soon given to them.<sup>3</sup> While the Board of Trade had general supervision of all matters pertaining to the colonies, and handled all correspondence to and from them, subject, of course, to constant review by the king in Council, still other British officials exercised more authority in all matters of any importance.<sup>4</sup> The

<sup>1</sup> The royal will was expressed by an order in Council, or by an order, commission, or warrant, under the sign manual of the sovereign, or by writs, letters-patent, or other documents under the great seal. (Anson, vol. ii, pp. 43-47, 53.)

<sup>2</sup> Andrews, *Colonial Self Government*, p. 26. E. R. Turner, "The Development of the Cabinet, 1688-1760," *American Historical Review*, vol. xviii, no. 4, pp. 760-761, 766; vol. xix, no. 1, p. 27.

<sup>3</sup> Andrews, *British Committee, Commissions, and Councils of Trade and Plantations*, pp. 112-113.

<sup>4</sup> O. M. Dickerson, *American Colonial Government, 1696-1765*, pp. 24-26. *Calendar of State Papers, Treasury, 1557-1696*, p. 471.



lords of the treasury, for example, had many matters dealing directly or indirectly with finance referred to them by the Board of Trade, the commissioners of the customs, and others.<sup>1</sup> In addition to the Board of Trade, the lords of the treasury, and the commissioners of the customs, the other British officials who had much to do with colonial administration, were the receiver-general of the customs, the comptroller-general of the accounts of the customs, the auditor-general of the revenues, the attorney- and solicitor-general, and the lords of the admiralty.

The receiver-general of the customs, as his name indicates, received the customs duties. In addition to the accounts of the customs in English ports, the accounts of the collectors of the customs in the colonies were rendered to him and the lists of the salaries paid them were regularly recorded by him.<sup>2</sup> The comptroller-general of the accounts of the customs certified to the accounts of the collectors of the customs to the receiver-general of the customs. In the declaration of the accounts of the duties collected in the colonies made by the receiver-general of the customs, it was

<sup>1</sup> *Cal. St. P. Treas. 1557-1696*, pp. 203, 231, 426; *1708-1714*, pp. 94, 544; *Journal of the Board of Trade*, vol. xxv, p. 155. For example: A petition of the General Assembly of Virginia for leave to erect a school and college; a memorial of merchants trading in Virginia to prohibit the exportation of tobacco in bulk; certain laws passed in Virginia relating to revenue duties and manufactures; the loss of a merchant ship and the request of the owners for relief from port duties on it; a request of certain merchants for convoy of ships to accompany their vessels; the examination of revenue accounts, and request of the governor for special compensation. *Cal. St. P. Treas., 1557-1696*, pp. 205, 226, 268; *1702-1707*, pp. 305, 348, 483. A striking example of the variety of matters considered by them was that of a sheriff in Virginia, who was granted by them £300 out of the quit rents as compensation for the loss of his house, which was burned by one unfavorable to his action on a certain occasion when discharging his duty. *Cal. St. P. Treas. Books and Papers, 1729-1730*, nos. 367, 390.

<sup>2</sup> *Audit Office, Declared Accounts, Customs, Bundles, 800-821, Rolls, 1033-1070.*



stated that this was done "as by the certificate" of the comptroller-general of these accounts.<sup>1</sup>

The system of auditing the revenues of the colonies was further improved by the appointment of an auditor-general in addition to the officials mentioned. The first appointee was William Blathwayt (1680), and to him were referred all accounts of the revenues, prizes, fines, escheats, and petitions sent to the treasury that concerned the finances of the colonies. Not only the accounts of the usual royal revenues sent to England, or appropriated to the support of the government, but also the accounts of the duties on liquors and slaves, and the one penny a pound on tobacco, which were provincial revenues, were sent to him. All colonial accounts were presented, after examination by him, to the commissioner of public accounts and to the lords of the treasury.<sup>2</sup> He was commissioned under the great seal of Great Britain,<sup>3</sup> and received an annual salary of £500 out of the revenues of the colonies, of which amount Virginia paid £100, and later £150, as specified by the lords of the treasury.<sup>4</sup> He was paid, as most of the more important officers of the colony, out of the revenue of two shillings per hogshead export duty on tobacco, upon a warrant issued by the governor on the receiver-general.<sup>5</sup> He reported regularly

<sup>1</sup> *Audit Office, op. cit.*

<sup>2</sup> William Blathwayt's *Journal*, vol. i, pp. 7, 8, 70, 717; vol. ii, pp. 115, 225, 245; vol. iii, p. 76; *Cal. St. P. Treas. 1714-1719*, no. 387; 1708-1714, p. 578; *Cal. St. P. Treas. Books, 1742-1745*, p. 86.

<sup>3</sup> Blathwayt's, *op. cit.*, vol. i, pp. 2, 5; *Va. Mag. Hist. and Biog.*, vol. iv, p. 43.

<sup>4</sup> Barbadoes paid £150, Jamaica £150, Leeward Islands £100. *Va. Hist. Reg.*, vol. ii, p. 182; *Va. Mag. Hist. and Biog.*, vol. iii, p. 122; Blathwayt's *Journal*, vol. i, pp. 8, 49; Blathwayt, *Virginia Papers*, MS., *British Museum, King's MSS.*, no. 206, p. 249.

<sup>5</sup> *Journal of the Council of Virginia, MS.*, 1698-1703, p. 43; Blathwayt's *Journal*, vol. i, p. 43.

every six months on the condition of the colonies to the lords of the treasury and to the chancellor of the exchequer, as he received the accounts from the colonies, and sent to the king and the lords of the treasury all warrants and requests received from the colonies involving expenditures.<sup>1</sup> The petition of Micajah Perry, an English merchant, on behalf of William Byrd, receiver-general of Virginia, for an increase in the percentage charged for his services, was sent by the lords of the treasury to Blathwayt for his approval. The warrant of the queen to the governor (Nicholson), authorizing him to issue an order on the receiver-general to pay out of the quit rents £300 to Edmund Jennings for revising the laws of the colony, was endorsed by Blathwayt.<sup>2</sup> He appointed under the authority of the lords of the treasury deputy auditors in each colony, and was subject to the approval of the lords of the treasury in suspending or removing them.<sup>3</sup>

To the attorney- and solicitor-general,<sup>4</sup> who were legal advisers of the king, were referred the laws enacted in the colonies for their opinion on them. They also drafted the commissions and instructions which were sent to the governors, and to certain other officials, passed on the legal points involved in the proposals and suggestions of the governors and in the cases appealed from the colonies, and had general supervision of the judicial system in the colonies.<sup>5</sup>

<sup>1</sup> *Cal. St. P. Treas. Books and Papers, 1731-1734*, p. 536; *Cal. St. P. Treas. Papers, 1714-1719*, pp. 66, 135; *Journal Council of Va., MS., 1705-1721*, p. 62.

<sup>2</sup> Blathwayt's *Journal*, vol. ii, pp. 295, 541.

<sup>3</sup> *Ibid.*, vol. i, p. 11; *Journal Council of Va., MS., 1705-1721*, p. 26; *Va. Hist. Reg.*, vol. ii, p. 182.

<sup>4</sup> They were two persons who usually acted together.

<sup>5</sup> *Acts Privy Council, Col.*, vol. ii, nos. 320, 1282; *Colonial Office Papers*, cl. 5, vol. clix, p. 160; vol. cxc, pp. 46, 55; vol. ccx, p. 187; cl. 324, vol. vii, pp. 50, 132, 277. Cited as C. O. Blathwayt, *Virginia Papers*, MS.

The detailed matters examined by them may be inferred when such as the forfeiture of goods, a dispute between the importers of rum and a naval officer in Virginia as to certain fines imposed by a county court, and the guardianship of certain children in Virginia, were referred to them.<sup>1</sup> The governor of Virginia held, as vice-admiral, his commission under the great seal of the High Court of Admiralty of Great Britain. Matters pertaining to guard ships and convoys were referred to the admiralty office, and the appointments of the officers of the admiralty court in the colony were submitted to the lords of the admiralty for their approval, and their names were kept on record in that office.<sup>2</sup>

Virginia was only one of the colonies in the British colonial system and was considered in all matters subject to imperial control. The British government, through its various organs, such as Parliament, the courts, the executive, from the king to the several boards and committees, maintained this imperial control over the colonies as well as administered the affairs of the realm. It is significant that the colonies were thus considered as frontier provinces of the empire and that the same governmental machinery operated upon them as upon England itself. In order to expedite business, as the colonies developed, additional officials and committees were appointed, but these were not to act independently as if colonial affairs were separate and distinct from the long-established departments of the government, but were to report regularly to these departments.<sup>3</sup>

<sup>1</sup> *Journal Council of Virginia*, MS., 1698-1703, p. 119; 1721-1734, pp. 217, 281, 282; *Journal Board of Trade*, vol. ii, p. 325; vol. iv, pp. 133, 203; vol. vi, p. 224; vol. xii, p. 307; vol. xix, p. 424; vol. xvi, p. 194; vol. xxxvi, p. 4.

<sup>2</sup> *Sainsbury Papers*, 1691-1697, p. 292.

<sup>3</sup> H. L. Osgood, *The American Colonies in the 17th Century*, vol. iii, pp. 12, 20.

It is true, however, that the distance of the colonies from England made it impossible to bring them as fully under the operation of the machinery of government as England itself.<sup>1</sup> The organs of the British government did not, therefore, extend their operations as completely into the local affairs of the colonies as into those of England, although many of the matters of colonial administration were regularly referred to the home government.

As stated above, the Board of Trade, which was appointed in 1696, served as a clearing-house for colonial affairs. In addition to handling the correspondence which passed to and from the colonies, this Board had the power of recommending to the king in council persons to fill the more important offices in the colonies, to examine the laws passed by the colonial legislatures and to recommend to the king in council those which should be confirmed and those which should be vetoed. To summarize the various duties of this Board it may be stated that its jurisdiction included the administration of the continental American colonies, and the British colonies in the West Indies, the receiving of requests and complaints from English trading companies and merchants, and the consideration of the trade which England carried on with various other countries. This indicates the very arduous task imposed upon the Board requiring much time and labor. The plan was that the Board of Trade should, after the necessary investigation, make its recommendations to the committee of the Privy Council, which acted as a board of review and court of appeal, and that the Privy Council meeting with the king should take final action on all matters of importance. Certain kinds of business were sent directly to the secretaries of state, but the Board was informed as to the disposition by the secre-

<sup>1</sup> Osgood, *op. cit.*, vol. iii, pp. 8-11.

taries of state of all matters relating to the colonies. The commissioners of the customs, the lords of the admiralty, the lords of the treasury were, as has been stated, consulted by the Board from time to time regarding colonial matters concerning their respective departments. The Bishop of London was *ex-officio* member of the Board of Trade, as he exercised jurisdiction over church affairs in the colonies.

With such a system of diffused responsibility, prompt and effective administration was practically impossible. Even when the Board of Trade was composed of efficient men, there was constant delay in referring colonial matters to the various branches of the government service concerned, for, as already stated, there was no governmental machinery expressly for the colonies. The correspondence of the governors, various requests and reports made by them, the action upon colonial laws, and upon cases appealed from the colonial courts were very slowly considered.<sup>1</sup> This was in some cases due to negligence on the part of the officials themselves, but, when the various duties of the Board of Trade and other officials, involving the attention not only to the affairs of the American colonies and the British West Indies, but also to the matters pertaining to the interest of England itself and the whole British Empire, are considered, this delay can be understood.

From 1696 to 1714 the Board of Trade was efficient, but from 1714 to 1748 its inefficiency was marked, and this was due to the personnel, which changed with the ministry, and also to the fact that much of the business of the Board was

<sup>1</sup> Eight letters from Governor Spotswood of Virginia bearing dates from December 13, 1713, to November 26, 1715, were still unanswered by the Board in December 1715. A little later (June 1, 1716), there were fifteen letters from Spotswood to the Board (Dated from June 2, 1713, to January 16, 1716) which were then considered and answered at one time. *C. O. 5, 1364*, pp. 236, 376.



transferred to the secretaries of state. With the appointment of the Earl of Halifax as president in 1748, the Board became very efficient as he was very energetic and insisted on making the Board an important department of the government service.<sup>1</sup> From 1761, when he resigned, until 1765 the men who served as presidents of the Board were largely influenced by party politics, and changes in the ministry meant that the personnel of the Board would be affected.<sup>2</sup> The most important business was then transferred to the secretaries of state. The Board was thus deprived of its former influence and its president, Hillsborough, was made secretary of state for the colonies (1768). The Board thus ceased to be of any real force in the administration of the colonies, although it was not discontinued until near the close of the Revolution (1782). As secretary of state for the colonies, Hillsborough emphasized very strongly the royal prerogative and sought by a somewhat aggressive policy to apply with vigor rather repressive measures to the colonies.<sup>3</sup>

That much influence was brought to bear upon British officials in England in making colonial appointments may be readily inferred. Among those who thus wielded influence over colonial affairs were the merchants who were interested in the trade with Virginia.<sup>4</sup> A striking example of

<sup>1</sup> Andrews, *Colonial Self-Government*, p. 26. Dickerson, *American Colonial Government, 1696-1765*, pp. 31, 34, 37, 39.

<sup>2</sup> *Ibid.*, pp. 59-60. From 1696 to 1765 there were ninety-five appointments to the Board, with the tenure for this period, averaging about five years for each appointee. One member, Martin Bladen, served twenty-nine years. Long tenure did not necessarily mean efficiency. A change in the ministry often involved the removal of an active, influential man of the opposite party.

<sup>3</sup> *Ibid.*, pp. 54-57.

<sup>4</sup> An example of men in Virginia soliciting the coöperation of men of affairs and influence in London was that of William Byrd, who wrote



the part played by the merchants in the appointment of officials in the colony is furnished by a letter from William Beverley to Charles Smith, a London merchant, under date of March 10, 1741, regarding the office of secretary of Virginia: "I beg the favor of you," he said, "to make a purchase of it for me. Mr. Carter gave 1500 guineas for it, and I would give £2000, which is what I have heard others have ordered to be given for it, but rather than miss, I desire you will give something more for the said commission."<sup>1</sup> In the correspondence of the agent of the colony there occurs an interesting example of the methods adopted in securing certain appointments. In a letter of April 18, 1711, Blackiston, agent of Virginia, stated to Philip Ludwell regarding the office of auditor that Micajah Perry, a London merchant, had conferred with him on this matter and they had decided not to require him to pay £200.

I told him [said Blackiston], I did not doubt but we should work it for you on better terms, for Mr. Blathwayt has for a little piece of friendship I have done assured me he would be ready to do any service he could. I must do him justice, he told me frankly that if I inclined to prefer you before any other friend or was preëngaged to you, that you should have it upon terms of allowing two and a half percent, which I suppose is one moiety.<sup>2</sup>

Ludwell's commission was ordered by Blathwayt, the auditor-general, to be made out and sent to Micajah Perry, who forwarded it to Ludwell, then in Virginia.

to Sir Charles Wager, requesting him to use his influence to secure for him the office of surveyor-general of customs for the southern district of America. J. S. Bassett, ed., *The Writings of Colonel William Byrd*, p. 86.

<sup>1</sup> *William and Mary College Quarterly*, vol. iii, p. 229. He did not succeed in securing the appointment.

<sup>2</sup> *Va. Mag. Hist. and Biog.*, vol. iv, pp. 15, 16, 20.

The policy adopted by Charles II in regard to the colonies was largely influenced by the merchants of London, who desired the co-operation of the government in their plans to profit by trade with America. Martin Noell and Thomas Povey, two wealthy and influential London dealers, controlled a group who about 1660 and later endeavored to monopolize the trade with America and the West Indies, and exerted no small influence over colonial affairs.<sup>1</sup> Merchants were frequently in attendance at the meetings of the Board of Trade, and had much power, not only in regard to appointments, but also as to many matters of concern to the colony.<sup>2</sup> In 1752 they objected to the proposed lighthouse at Cape Henry, on account of the tax on ships which would be levied to pay for it. The act of the Virginia Assembly for this purpose was repealed by order of the king, and it was not until 1772 that the lighthouse was established.<sup>3</sup> Since certain dealers shipped liquor and slaves to the colony, it was but natural that they should petition the Board of Trade against the duties imposed in Virginia on these imports.<sup>4</sup> The influence of the merchants was recognized by certain men in the colony who desired endorsement by them of their petitions to the Board of Trade.<sup>5</sup> By means of bills of exchange on London merchants the governor paid the solicitor of Virginia affairs in London, and discharged other public and private obligations.<sup>6</sup>

Micajah Perry, another London merchant, is a striking example of the influence which the English traders exerted

<sup>1</sup> Andrews, *British Committees, Commissions, and Councils of Trade and Plantations*, pp. 49-55.

<sup>2</sup> *Journal Board of Trade*, vol. xix, pp. 277, 394; vol. xxx, pp. 356, 468.

<sup>3</sup> *Ibid.*, vol. lxvii, p. 3; vol. lxviii, p. 190; Hening, vol. viii, p. 539.

<sup>4</sup> *Journal Board of Trade*, vol. xxxiv, p. 2.

<sup>5</sup> *Ibid.*, vol. xlii, p. 73.

<sup>6</sup> *Dinwiddie Papers*, vol. i, p. 252; vol. ii, pp. 50, 277.

in the affairs of the colony. He was at one time solicitor of affairs for Virginia and Maryland.<sup>1</sup> Later, when not serving in this capacity, he was instructed by the receiver-general, upon an order of the Council, to reimburse the solicitor of Virginia affairs for expenditures in the interest of the colony, and to "advance, from time to time, what he shall hereafter have occasion for in his negotiations."<sup>2</sup> He recommended prospective councillors to the Board of Trade, and was frequently summoned by that body to give his opinion on laws of Virginia affecting trade. He furnished the colony with certain stores, presented to the commissioners of the prize office the request of the agent of prizes in Virginia for special compensation, and for service rendered the colony was paid in bills of exchange drawn by the governor.<sup>3</sup> He was on the bond of William Byrd, the receiver-general, for £10,000, and later on that of another receiver-general, John Grymes, for £6000.<sup>4</sup> He used his influence with the auditor-general of the revenues to have Philip Ludwell appointed auditor of Virginia.<sup>5</sup> He and his brother Richard offered a petition in behalf of William Byrd, the receiver-general, for the renewal of his appointment.<sup>6</sup> He kept in constant communication with William Byrd, on certain occasions paid money into the exchequer on instructions from him,<sup>7</sup> and once

<sup>1</sup> *Cal. St. P. Col.*, 1696-1697, no. 1157; 1701, nos. 184, 766.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 117.

<sup>3</sup> *Journal Board of Trade*, vol. xii, p. 147; *Cal. St. P. Col.*, 1699, no. 1050; *Va. Mag. Hist. and Biog.*, vol. iii, p. 232.

<sup>4</sup> *Cal. St. P. Treas. Books and Papers*, 1729-1730, no. 666; *Blathwayt's Journal*, vol. ii, p. 360; *Journal Council of Va.*, MS., 1705-1721, app., p. 54.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. iv, pp. 15, 16, 20.

<sup>6</sup> *Cal. St. P. Treas. Papers*, 1714-1719, p. 91.

<sup>7</sup> *Ibid.*, 1708-1714, p. 151.

petitioned the lords of the treasury for an increase of Byrd's salary from four to five per cent.<sup>1</sup> In 1705 the receiver-general, by order of Council, remitted to Micajah Perry and Company a bill of exchange for £1669, which was the amount of the quit-rents for 1704.<sup>2</sup> He had a brother who was a merchant in York County, Virginia, and a nephew who was a merchant in Charles City County.<sup>3</sup> His interest in colonial affairs was not confined to Virginia, and on one occasion he furnished the colony of New York with £8000.<sup>4</sup> That he had much influence with British officials, and played an important part in the affairs of the colony, is thus quite apparent.

Certain merchants occupied in some instances an intermediate position between the governor and the British authorities. Regarding supplies of various kinds furnished by Dinwiddie to the military company ordered to Virginia by the British government, Dinwiddie wrote to Messrs. J. and C. Hanbury, London merchants, as follows: "I must beg you to apply to the secretary of state and the secretary of war, to qualify me to draw for reimbursement."<sup>5</sup> The next year, 1755, in a letter to the secretary of state, he said: "Agreeable and in obedience to his majesty's commands, I have transmitted my warrant to the paymaster general of the army, for £2000, payable to Mr. J. Hanbury, from the revenue of two shillings per hogshead on tobacco."<sup>6</sup> On

<sup>1</sup> Blathwayt's *Journal*, vol. ii, p. 541.

<sup>2</sup> *Va. Mag. Hist. and Biog.*, vol. xvi, p. 73.

<sup>3</sup> *W. and M. Col. Quart.*, vol. xvii, pp. 264, 265.

<sup>4</sup> *Cal. St. P. Treas. Papers, 1708-1714*, p. 151.

<sup>5</sup> *Dinwiddie Papers*, vol. i, pp. 252, 337; vol. ii, p. 271. He was reimbursed out of the two shillings per hogshead revenue the £1040 which he had expended.

<sup>6</sup> *Ibid.*, vol. ii, p. 50.

other occasions the same merchant transacted business for Dinwiddie. The following incident will help to show the several governmental services rendered. In 1754 Dinwiddie wrote to the secretary of the Board of Admiralty: "I desire you will send me thirty passes, and Mr. John Hanbury will pay you for those you last sent me."<sup>1</sup> A letter to the Earl of Grenville, the proprietor of North Carolina, regarding a sum of money forwarded to him by his agent in North Carolina through Dinwiddie, makes this statement: "I enclose your lordship my own draft on Messrs. J. and C. Hanbury for £429."<sup>2</sup>

The British government thus recognized the important part which the merchants had in the development of the colonial trade, and also in the actual administration of affairs. A striking example of the encouragement given by it to these men is shown in the clause in the instructions to the governors of Virginia from Culpeper (1682) to Dunmore (1771) directing them to render assistance to merchants, and especially to the Royal African Company of England. This company was encouraged by the British government to furnish regularly a supply of "merchantable negroes" to Virginia, at "moderate rates." The king's dividend in this company was £322 10s. a year.<sup>3</sup> The governor was ordered to prevent any trading between Virginia and the part of Africa under the jurisdiction of that com-

<sup>1</sup> *Dinwiddie Papers*, vol. i, p. 105.

<sup>2</sup> *Ibid.*, p. 136.

<sup>3</sup> *British Museum, Add. MSS.*, no. 10119, f. 216. This was for the period 1685-1689. The dividend was no doubt continued. The company was incorporated in 1672, and had a monopoly until 1697 when this trade was thrown open to the colonies. The mismanagement of the company led to its dissolution in 1747, and in 1750 there was organized the Company of Merchants Trading to Africa. C. M. Andrews, "Anglo-French Commercial Rivalry, 1700-1750," *American Historical Review*, vol. xx, no. 3, p. 554.



pany, and to report annually the number of negroes brought in.

The British government further endeavored to protect this and other companies by a special clause in the instructions to the governor (Earl of Albemarle) in 1738, regarding the courts of the colony. It stated that owing to the frequent adjournment of the courts, the Royal African Company and others were prevented from recovering debts due them. The governor was to see that this irregularity was not repeated, and also to refuse to give his assent to any act of Assembly imposing a duty on negroes imported into the colony, to the "great discouragement of merchants trading to Africa."<sup>1</sup> Notwithstanding the unquestionable support of the Royal African Company by the British government this instruction was not strictly executed, for the British government approved certain acts for this purpose. The preamble of these acts, however, specified that the duty was for "lessening the levy by poll," for "building the capitol," for paying the debt incurred by the French and Indian War, and for "other public charges." The revenue from this duty was thus appropriated to the support of the government, which fact no doubt accounted for the approval of the British authorities. The real motive of the colonists in laying a duty on slaves was to prevent the increasing importation of them. In addition, as late as 1772 the burgesses requested the king that for the good of the colony the slave trade, long considered a "trade of great inhumanity," might be abolished. They referred to the merchants as follows:

We are sensible that some of your majesty's subjects in Great Britain may reap emoluments from this sort of traffic, but when

<sup>1</sup> C. O. 5, 1795, p. 249.



we consider that it greatly retards the settlement of the colonies with more useful inhabitants, and may in time have the most destructive influence, we presume to hope that the interest of the few will be disregarded when placed in competition with the security and happiness of such numbers.<sup>1</sup>

In the seventeenth century very few ships were owned by the colonists. By the middle of the eighteenth century the number had gradually increased, but even then the British-owned vessels far exceeded those owned by the colonists. Robert Dinwiddie, then surveyor-general of the customs for the southern district of America, in his report on Virginia to the Duke of Newcastle, one of the principal secretaries of state, said that in 1743 there were fifty ships owned by Virginians and one hundred and fifty British ships trading in the colony. To encourage the colonists in owning ships the Assembly exempted them from castle duties—later known as port duties—the two shillings a hogshead on tobacco exported, the duty on liquors for a brief period, and half of the naval officers' and collectors' fees.<sup>2</sup> The British merchants maintained that this was an unjust discrimination, as they were required to pay duties and fees from which the colonists were relieved. The exemptions from the port duty and the duty of two shillings a hogshead are not mentioned in the acts of Assembly after 1710, and that from half the naval officers' and collectors' fees, after 1748. The act providing for the exemption from the duty on liquors was repealed in 1731. The British authorities, yielding to the desire of the traders, disallowed certain acts which contained these exemptions.<sup>3</sup>

<sup>1</sup> *Journal House of Burgesses, 1770-1772*, p. 283.

<sup>2</sup> Hening, vol. i, pp. 402, 536; vol. ii, pp. 134, 272; vol. iii, pp. 23, 88, 347, 352, 494; vol. vi, p. 97.

<sup>3</sup> *C. O.* 5, 5, ff. 61-62, 200-203; 324, 12, p. 153; *Journal House of Burgesses, 1710-1712*, p. 281.

It is quite evident that the interests of the merchants were conserved at the expense of the colonists, who from time to time endeavored to develop the resources of the colony. The merchants opposed any plan of the colonists that would render them less dependent upon commercial intercourse with England. The Board of Trade, reporting to Parliament a letter from Governor Gooch of Virginia of February 1, 1732-3, said that

Major Gooch in his letter of Oct. 5th last, informed us that there is, now, no act subsisting in that province, which can, in any sense, be said to affect the British trade. That since the last returns to us upon this subject, there hath been one potters' work set up in Virginia, for coarse earthenware, but that this is of so little consequence, that he believes it has occasioned little or no diminution of the earthenware that used to be imported. That they have now four iron works in that colony, employed in running pig iron only, which is afterwards sent to Great Britain to be forged and manufactured.<sup>1</sup>

Many of the problems and financial difficulties of the colonists were due to the selfish plans of the English merchants. When the merchants endeavored temporarily to check the production of tobacco, this policy was inspired by a desire to prevent further shipments from the colony until the supply on hand could be disposed of. While thus increasing the demand for tobacco the merchants were conserving their own interests irrespective of the wishes of the colonists. Even a temporary reduction in the production of tobacco deprived the colonists of their chief medium of exchange. Since the English merchants had control of the tobacco shipped from the colony and could therefore regulate the price, it is not difficult to understand how they purposely lowered the price to be paid the colonists and then

<sup>1</sup> C. O. 5, 5, f. 2.

so monopolized the English market as to make a large profit. Such schemes so enraged certain of the colonists near the close of the seventeenth century that they destroyed their tobacco rather than submit to the dictatorial policy of the merchants.<sup>1</sup>

That the merchants occupied a position of much influence is quite apparent, and that they often used this influence in their own interest to so marked a degree as to provoke the colonists is clearly shown by the remonstrances against them. There was more or less complaint during the period from 1700 to 1775; in fact, the dissatisfaction dated back to 1660. The protest against the oppressive demands of the merchants in 1732 resulted in the petition known as "The Case of the Planters of Tobacco in Virginia," which was sent to the British government by a special agent. This was a memorial of the Assembly, and was approved by Governor Gooch;<sup>2</sup> it complained of the British merchants, who had added to the already heavy transportation and customs duties other demands which made it impossible for the planters to make a profit. This petition was not answered favorably. Gooch, writing (August 12, 1732) to the Bishop of London, stated that the colonists were desirous of paying the customs duties while the British merchants not only subjected them to many hardships but also defrauded the revenues. He said that Sir John Randolph had been

sent over by our General Assembly with their address to his majesty, their petition to Parliament, and a letter from them to the lords of the treasury, to solicit, with the consent of the ministry, for relief from many hardships the people here com-

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. xviii, pp. 299-423.

<sup>2</sup> Gooch in a letter to the Duke of Newcastle, July 20, 1732, commended Sir John Randolph, the special agent of the Assembly.

plain of, occasioned by unfair traders, who land their tobacco without paying the customs, and they humbly propose to have it put under an excise or into any method, whereby the frauds may be prevented and the king's duty secured.<sup>1</sup>

Even Gooch, one of the most successful governors, not only failed in his effort to protect the colonists against the merchants, but also incurred their especial dislike.

The merchants interested in the British sugar colonies in the West Indies, in their petition to the Board of Trade (October 18, 1750), were very insistent in their purpose to prevent the colonists in America from trading with any other sugar colonies. They urged that this "destructive trade" should be discontinued and that the colonists should be "prohibited by act of Parliament from receiving or taking any sugar, rum or molasses from any foreign sugar settlements on any pretense whatsoever under the penalty of confiscation of ship and cargo." Ships of war were to be stationed on the Atlantic coast and in the West Indies to seize and to make a prize of any merchant vessel that disregarded this provision.<sup>2</sup> This was evidently a request not only to make more effective the act of Parliament passed in 1733 and in effect from that time, as shown by the account of the duties collected and the prizes taken, as rendered by the comptroller-general of the accounts of the customs in 1750, but to have another act passed prohibiting this trade even if the duties were paid. The imposition of the duties in 1733 were for the purpose of checking the trade with the French and other foreign sugar colonies. The account of the duties collected and the prizes taken from 1733 to 1750 shows that the colonists in Virginia, although desirous of continuing this trade, did not engage in it as exten-

<sup>1</sup> Fulham, MSS., *Virginia*, 1st box, no. 137.

<sup>2</sup> C. O. 5, 38, p. 687, app. nos. 3, 5, 6.

sively as some other colonies.<sup>1</sup> The colonies could not afford to sacrifice their prosperity to that of England by submitting to the commercial restrictions which were placed upon them by the British government.

The action of the merchants somewhat later in regard to the paper money of the colony served to antagonize the colonists still further. On May 19, 1763, Governor Fauquier in a speech to the Assembly referred to a special instruction recently received and communicated to that body regarding the payment in sterling coin of debts owed to British merchants. This instruction had not been obeyed, and upon a renewal of the complaint of the merchants to the Board of Trade, the governor had been again informed of the endorsement of the claim of the merchants, and copies of the resolutions of the Board regarding this matter had been sent to him.

In laying these resolutions before the Assembly, the governor said:

I have never yet deceived you, and I will not now attempt it:

Accounts of duties collected and prizes taken:

|                      | <i>Duties</i> |    |     | <i>Prizes</i> |    |    |
|----------------------|---------------|----|-----|---------------|----|----|
|                      | £             | s. | d.  | £             | s. | d. |
| Bahama Islands ..... | 777           | 3  | 2¾  | 1879          | 18 | 5  |
| South Carolina ..... | 671           | 18 | 1¾  | 3073          | 3  | 1  |
| North Carolina ..... | —             | —  | —   | 529           | 4  | 2  |
| Virginia .....       | 61            | 5  | 3½  | 587           | 7  | 9  |
| Maryland .....       | 63            | 15 | —   | —             | —  | —  |
| Pennsylvania .....   | 600           | 6  | 10  | 144           | 11 | 9  |
| New Jersey .....     | 45            | 16 | 6   | —             | —  | —  |
| New York .....       | 2002          | 12 | —   | —             | —  | —  |
| Connecticut .....    | —             | —  | —   | 98            | 11 | 3  |
| Massachusetts .....  | 1043          | 6  | 5½  | 313           | 1  | 7  |
| Bermuda .....        | 337           | —  | 10¾ | 1020          | 6  | 2  |
|                      | —             | —  | —   | —             | —  | —  |
|                      | 5603          | 4  | 4½  | 7616          | 4  | 2  |

"Customs House, London, Dec. 5, 1750," *C. O.* 5, 38, app. p. 205.



but in plain language inform you that all endeavors to evade their force will prove fruitless, and plunge you still deeper in his majesty's displeasure. It is absolutely necessary that something should be done to give the merchants that satisfaction for which they call upon you and for which in case of failure of success here, they will call upon a higher power.<sup>1</sup>

A full explanation was given in an address of the burgesses to the governor, May 28, 1763, and a declaration of the loyalty of the colony was set forth as follows:

Our dependence upon Great Britain we acknowledge and glory in, as our greatest happiness and only security, but this is not the dependence of a people subjugated by the arms of a conqueror, but of sons sent out to explore and settle a new world for the mutual benefit of themselves and their common parent.<sup>2</sup>

Regarding the debt incurred by the French and Indian War, the burgesses stated in this address that they would "cheerfully sustain" it "if the merchants had not raised a most unreasonable clamor against our paper bills of credit." Explaining the issue of paper money, they said:

All our neighboring colonies had long before adopted, and most of them repeated, the expedient of paper to supply the want of specie, in time of peace, but that we did not follow their example, before the last war, after all our treasure was anticipated, and that even then we chose at first to borrow £10,000, granted for his majesty's service, at the high interest of six per cent, and never until after that resource failed, went into a measure so little relished, and always, except in one instance of trifling consequence, confined the amount of the notes to the money granted.

The merchants claimed that they were being unjustly

<sup>1</sup> *Journal House of Burgesses, 1761-1765*, p. 171.

<sup>2</sup> *Ibid.*, pp. 188-192.



dealt with because the instructions to the governor of January 3, 1759, were not being followed. To avoid any contention which might be later raised by the merchants, the burgesses sent at that time an address to the king in regard to the proposed issue of paper money. It was not until 1763 that the merchants again complained. In answer, the burgesses said :

We concluded that as they raised no objection, they were satisfied of our intention to do them justice. And we can venture to say that had we known our reasons were not satisfactory, it would have prevented several subsequent emissions, and particularly the last which gave rise to the present complaint.

After declaring their purpose to pay in sterling money as far as possible any debts owed to the merchants, and stating that the notes complained of were issued for a limited time and were secured by taxes, the burgesses said : " But, at the same time, we considered how the interest of the British merchants might be affected by this money, and at least as far as was in our power, if not effectually, secured that from injury." Commenting on the action of the merchants some years before in regard to the rate of exchange in the payment of sterling debts, the burgesses showed that the law of 1748 providing that sterling debts should be discharged by allowing twenty-five per cent addition—the difference at that time between current money and sterling coin—was objected to by the merchants. The complaint of these traders that they would be the losers when the exchange should be over that amount was considered by the burgesses, and the courts were empowered to settle at what rate of exchange sterling debts should be discharged. The merchants did not, however, consider this sufficient security.

The decision of the burgesses in the case, as stated in the above address, was as follows :

As the present possessors of the treasury notes have received them under the faith of a law, making them a legal tender in all payments, except for his majesty's quit-rents, to alter that essential quality of them, now, would be an act of great injustice to such possessors, and that as the British merchants have constantly received, and under the present regulations of our laws, will continue to receive such notes for their sterling debts, according to the real difference of exchange between this colony and Great Britain, at the time of payment, their property is so secured as to make such alteration unnecessary with respect to them.

The merchants renewed their complaint to the Board of Trade in 1764, hoping to obtain their demands through that body and the governor without laying them before Parliament.<sup>1</sup> Governor Fauquier, in presenting again the claim of the merchants, maintained that it was "reasonable on the face of it." The reply of the burgesses of November 9, 1764, stated quite clearly their position.

As we have not sterling specie to pay here, which the merchants well know, we could secure the sterling creditors from injury, in the receipt of the paper, by no other means that we can suggest, except by directing that they should be paid so much paper as would place their money in Britain without loss.<sup>2</sup>

The position of the merchants, supported by the Board of Trade and the governor, was considered all the more unreasonable in view of the fact that the issue of paper money was made necessary by the expenses incurred by the colony in supporting the French and Indian War.

That the merchants were influential in having passed the acts of Parliament laying duties on certain articles im-

<sup>1</sup> *Journal House of Burgesses, 1761-1765*, p. 227.

<sup>2</sup> *Ibid.*, p. 249.

ported into the colony may be readily inferred. A letter of June 22, 1770, from Governor Botetourt to the secretary of state regarding the association formed in the colony for a systematic boycotting of British goods stated that the British merchants were largely responsible for it.<sup>1</sup>

<sup>1</sup> *Journal House of Burgesses, 1770-1772*, intro., p. 27.

## CHAPTER II

### THE GOVERNOR

THE chief executive of the colony, designated in 1607 as the President of the Council, was elected by that body. Under the new charter of 1609 his title was changed to governor, and he was elected by the London Company. The governorship was filled by the appointment of the London Company until 1624, when the colony became a royal province and the appointive power reverted to the king. From 1624 to 1704, with the exception of the period of the Protectorate (1652-1660), the office of chief executive was filled by a royal appointee, who had the full title and right of governor. But from 1704 to 1768 there were four governors-in-chief, who remained in England while their deputies actually administered the affairs of the colony.<sup>1</sup> This line of titular governors<sup>2</sup> began with the Earl of Orkney, who held the office for thirty-three years (1704-1737), while Nott, Spotswood, Drysdale and Gooch successively served as his lieutenant-governor. From 1768 to 1775 the two governors, Baron de Botetourt and the Earl of Dunmore executed in person the duties of the governorship.

<sup>1</sup> Earl of Orkney, Earl of Albemarle, Earl of Loudoun and Sir Jeffrey Amherst. Loudoun and Amherst commanded the British army in America at the time of the French and Indian War, but did not come to Virginia.

<sup>2</sup> There were instances in the seventeenth century, of certain governors leaving the colony temporarily in the hands of a deputy, but there was then no such official as a governor-in-chief, who permanently remained in England.

The fact that the governor-in-chief for the period indicated resided in England made it necessary to furnish the lieutenant-governor with separate commission and instructions. In some cases the instructions were addressed to the governor-in-chief "or to his lieutenant-governor and commander-in-chief" in the colony.<sup>1</sup> In Spotswood's commission it was stated:

We do hereby authorize and require you in such case as aforesaid to execute and perform all and singular, the powers and authorities contained in our commission granted to him, the said George, Earl of Orkney, and according to such instructions as he hath, or shall, or you shall, at any time, receive from us.

Thus the lieutenant-governor was a royal appointee and not simply a deputy of the governor-in-chief. The governor-in-chief could of course recommend a lieutenant-governor but could not appoint him. Loudoun, for example, recommended Colonel John Young to succeed Dinwiddie, but he was not appointed.<sup>2</sup> A comparison of the instructions to Howard (1683), who had the title of governor, with those of Nott (1705), the deputy of the Earl of Orkney, and with those of later lieutenant-governors, shows that in all essential matters there was practically no difference between them and that the office of governor-in-chief did not necessarily carry with it additional powers.

The colonists complained, near the close of the seventeenth century, to the home government, on account of the frequent absence of the governor from the colony. There was, therefore, no opposition to the plan adopted in 1704, of appointing a member of the nobility, who himself remained in England but sent his lieutenant-governor to the

<sup>1</sup> *C. O.* 324, 50, p. 93.

<sup>2</sup> *Ibid.*, 5, 18, p. 55.

colony. The first lieutenant-governor under this system (Nott) was, however, commissioned as governor in order that he might exercise the proper authority in quieting the disturbed conditions due to the dictatorial measures of the preceding governor (Nicholson).

The general impression has been that the office of governor-in-chief was simply a sinecure, and that the favorite who secured the appointment concerned himself little, if at all, with the affairs of the colony. An examination of the correspondence of the lieutenant-governors and also of the Journal of the Board of Trade shows that, although the governor-in-chief was not given additional powers, still he interested himself in the colony and rendered valuable service in negotiating with the home government on its behalf. There was in London an agent of the colony, to whom many matters were referred by the governor and Council; still in his negotiations he was to be advised by the governor-in-chief. In a letter (November 16, 1713) to Colonel Blackiston, the agent of the colony, Spotswood, instructed him in regard to presenting an enclosed address of the General Assembly to the king, which service he was to perform, "after having concerted with the Lords Commissioners of Trade, and my Lord Orkney, the proper time for doing it."<sup>1</sup> That this was the customary procedure was evidenced by another letter (December 1, 1714) from Spotswood to him regarding addresses of the Council and the burgesses, "which," said he, "I desire you will present, as usual, in concert with my Lord Orkney and the Board of Trade."<sup>2</sup> It seems that the Board of Trade usually adopted the recommendations of the governor-in-chief in regard to the appointments to the Council. The lieutenant-governor sub-

<sup>1</sup> *Official Letters of Alexander Spotswood*, vol. ii, p. 43. Cited as *Spotswood Letters*.

<sup>2</sup> *Ibid.*, p. 78.



mitted his recommendations to fill vacancies in that body to the Board of Trade, which were to be passed on by the governor-in-chief.<sup>1</sup> An entry in the Journal of the Board of Trade is very clear on this point:

Ordered, that the Earl of Orkney be acquainted that this Board having under consideration the filling up such vacancies as are at present in the Council of Virginia, they are desirous to know whether his lordship has any person to recommend to those places.<sup>2</sup>

In case of serious conflict between the lieutenant-governor and either the Council or the burgesses, the Board of Trade, of course, consulted the governor-in-chief as to the best course to pursue. The Earl of Orkney recommended certain measures in the hope of settling the dispute between Spotswood and the Council.<sup>3</sup> The Journal of the Board of Trade of a little later date contains this statement: "The Earl of Orkney coming to the Board, their lordships had some discourse with him concerning the differences between Spotswood and the Council."<sup>4</sup> In a letter of May 26, 1719, to the secretary of state in regard to the decision of the grand jury, disavowing the accusations of the burgesses against him, Spotswood stated that he had requested the Earl of Orkney to present it to the king. He said: "I have transmitted it to my Lord Orkney, not doubting his lordship will use your advice and assistance in the presenting it."<sup>5</sup> The seriousness of the controversy between Spotswood and the Council and the burgesses is indicated

<sup>1</sup> *Journal of the Board of Trade*, vol. xx, p. 274; vol. xxx, p. 457.

<sup>2</sup> *Ibid.*, vol. xxiii, p. 435.

<sup>3</sup> *Ibid.*, vol. xxvii, p. 400.

<sup>4</sup> *Ibid.*, vol. xxviii, p. 198.

<sup>5</sup> *Spotswood Letters*, vol. ii, p. 319.

by a criticism of the system by which the governor-in-chief was permitted to remain in England. In a letter to the secretary of state, October 22, 1718, Spotswood said :

It is not altogether personal against me, but that even government itself is the burden they complain of ; they attribute the source of these evils to my Lord Orkney, who doth not reside among them, as well as to myself, who is on the place, for which reason, their agent, Mr. Byrd, is to procure the removal of us both.<sup>1</sup>

Spotswood was removed within about three years, but if any effort was made to have Orkney removed, it proved futile. While no such opposition to the office of governor-in-chief occurred, still there was at that time some objection to having a deputy filling the governorship. The interest of Orkney in other than purely political matters in the colony was shown by his negotiations with the Board of Trade in regard to the encouragement of the plan proposed by Spotswood to develop the manufacture of iron in the colony.<sup>2</sup>

Upon the death of the Earl of Orkney (July 29, 1737), the Earl of Albemarle was appointed (September 6, 1737) to succeed him. He was an officer in the British army and served on the continent from 1743 to 1747, having command of the army in the Battle of Vall, July 2, 1747. In 1748 he was sent as ambassador to France, in 1751 was made a privy councillor, and in 1752 was appointed one of the lords justices during the absence of the king in Germany.<sup>3</sup> As he was appointed in 1737 and served until December, 1754, he was, of course, governor-in-chief of Vir-

<sup>1</sup> *Spotswood Letters*, vol. ii, p. 306.

<sup>2</sup> *Ibid.*, p. 28; *Journal Board of Trade*, vol. xxiv, p. 203.

<sup>3</sup> *The Official Records of Robert Dinwiddie*, vol. i, p. 208. Cited as *Dinwiddie Papers*.

ginia during the period just mentioned. He, as in the case of Orkney, was consulted as to certain appointments. Dinwiddie, in recommending James Abercromby to be agent of the colony, stated in a letter (June 18, 1754) to Albemarle: "I hope this will meet with your lord's approbation."<sup>1</sup> During the French and Indian War, Dinwiddie in his correspondence with Albemarle furnished detailed accounts of the movements of troops, emphasized the necessity for intercolonial co-operation, the need of supplies for the continuance of the war, the attitude of the assembly, and similar matters.<sup>2</sup> From a letter to him on August 15, 1754, it would seem that he used his influence in having military supplies sent to the colony. Dinwiddie stated that he had applied to the secretary of state for supplies, and "I humbly pray," said he, "your countenance and intent in procuring them."<sup>3</sup> Albemarle was evidently in Paris during most of the year 1754, as Dinwiddie referred to letters received from him under date of March 8th, April 3rd, and Sept. 16th of that year, and mailed at Paris. His correspondence with Dinwiddie was thus not interrupted by his being away from London. While in Paris he was requested by Dinwiddie to render him assistance in the pistole fee controversy, which was then before the king in Council. In a letter of June 18, 1754, in thanking him, he said: "I am obliged to your lordship in writing to London in my favor, on that head."<sup>4</sup> The reinstating of Peyton Randolph as attorney-general, who had been removed by Dinwiddie on account of the conspicuous part which he took in that controversy, took place by the order of Albemarle. Referring

<sup>1</sup> *Dinwiddie Papers*, vol. i, p. 210.

<sup>2</sup> *Ibid.*, pp. 247, 333.

<sup>3</sup> *Ibid.*, p. 282.

<sup>4</sup> *Ibid.*, p. 208.

to his compliance, Dinwiddie said: "Your lordship's interceding in behalf of Mr. Randolph's being reinstated in his former office has had a proper influence on me, and according to your desire, which I can by no means withstand, I have replaced him in his office."<sup>1</sup>

The office of governor-in-chief upon the death of the Earl of Albemarle (December 23, 1754) remained vacant until about May, 1756, when the Earl of Loudoun was appointed.<sup>2</sup> He came to America as the commander-in-chief of the British troops, arriving in July, 1756, but did not visit Virginia. Dinwiddie's correspondence with him was devoted to military affairs, and did not indicate any desire on the part of Loudoun to direct the administration of the government of the colony.<sup>3</sup> It is quite reasonable to suppose that had he wished to do this he would have availed himself of the opportunity offered by the conference of the governors of the southern colonies in regard to the war, which he held at Philadelphia in 1757. Dinwiddie attended this conference, and would no doubt have referred in his correspondence to any special directions given him in regard to the administration of the colony. It was on this occasion that Dinwiddie requested of Loudoun permission to return to England for his health, but was refused on account of the lack of authority. Dinwiddie then communicated with the agent of Virginia and one of the secretaries of state in order to obtain the king's permission.<sup>4</sup> It had been necessary, especially from 1680, for the governor to secure leave of the king to be absent from the colony. This policy was not changed under the titular governors of the eighteenth

<sup>1</sup> *Dinwiddie Papers*, vol. i, p. 497.

<sup>2</sup> *Ibid.*, vol. ii, pp. 3, 415.

<sup>3</sup> *Ibid.*, pp. 455, 491, 532, 568, 618, 628, 664, 666; *C. O.* 5, 18, p. 55.

<sup>4</sup> *Ibid.*, 324, 51, p. 99; *Dinwiddie Papers*, vol. ii, pp. 601, 620.

century, as the governor-in-chief could not grant permission for this purpose.

The Earl of Loudoun was succeeded in 1763 by Sir Jeffrey Amherst, who was also commander-in-chief of the British troops in America and governor-in-chief of Virginia. In the correspondence of Amherst with the lieutenant-governor no mention is made of his being governor-in-chief. These letters were confined to military affairs. In addition to these there were also circular letters sent by Amherst to the governors of the several colonies, including Virginia, which would indicate that he did not give special attention to that colony.<sup>1</sup> He did not visit the colony. The line of titular governors-in-chief ended with Amherst in 1768. It seems that Loudoun and Amherst did not concern themselves with the affairs of the colony as much as did Orkney and Albemarle. This, no doubt, had much to do with the general satisfaction occasioned in the colony when Botetourt arrived with the assurance from the king that for the future the governor would reside in Virginia.

The governor<sup>2</sup> was commissioned under the great seal of Great Britain and was responsible to the king.<sup>3</sup> The commission issued to him did not specify any term of ser-

<sup>1</sup> C. O. 5, 54, p. 9; 56, p. 579; 57, p. 567; 63, pp. 199, 443, 447, 690.

<sup>2</sup> The term "governor" will be used to designate the one who actually administered the affairs of the colony. It must be remembered, however, that from 1704 to 1768, he was the deputy of the governor-in-chief, but in reality more than a mere deputy.

<sup>3</sup> All the executive offices of the colony became elective under the Protectorate, and as Cromwell did not make any appointments for Virginia, the governor did not act under commission from him, but was elected by the House of Burgesses. No doubt, Cromwell fully intended to issue a commission for the governor of Virginia, for in 1653, and 1654 he discussed the matter with his Council and expressed his determination to do so. Henning, vol. i, pp. 431, 516, *Calendar of State Papers, Colonial Series, 1574-1660*, pp. 397, 413; Andrews, *Colonial Self-Government*, p. 205.



vice, but stated that the tenure was during the king's pleasure. Culpeper's appointment was, however, for life, but owing to his leaving the colony without permission, and also accepting a present from the Assembly, he was removed in 1683, after having served eight years, only about fifteen months of which were actually spent in the colony. This was the only exception to the policy of the British government, so far as Virginia was concerned, to appoint governors during the king's pleasure and not for life. The instructions were explicit directions in regard to the exercise of the grant of powers contained in the commission. The instructions which were sent to the governor in addition to his commission were considered as coming direct from the king. In some cases they actually did so come and the document bore the sign manual of the king. In other cases they were signed by the principal secretary of state by order of the king, while still others were drafted by the lords justices and members of the Privy Council.<sup>1</sup> The commission was, however, always issued under the great seal. The actual preparation of the instructions after 1696 was entrusted very largely to the Board of Trade, who, however, consulted quite frequently the attorney and solicitor-general, the lords of the treasury, the lords of the admiralty, the commissioners of the customs, and the Bishop of London when matters bearing upon their respective offices were under consideration. But even during the period 1624-1660, when committees and commissions exercised a certain administrative power over the colony, the instructions, nevertheless, were sent as usual (except during the Protec-

<sup>1</sup> Instructions to the governors,—see bibliography; *Acts Privy Council, Col.*, 1613-1680, nos. 211, 1250; *McDonald Papers*, vol. vi, p. 235; vol. vii, p. 19; Beer, *Origins*, p. 311; *Va. Mag. Hist. and Biog.*, vol. ii, pp. 281, 393; vol. iii, p. 15; vol. iv, p. 49.



torate) by the king, by the Privy Council, or by one of the secretaries of state.<sup>1</sup>

The growth of the colony and the perplexing problems of government are indicated by the full and minute instructions which were given to each governor as he entered upon his office, and the additional instructions which were, from time to time, sent to him. The increase in the length of the formal instructions furnished at the beginning of the governor's term of service was very marked, especially after 1682. The instructions previous to that date were usually contained in from ten to twenty-five brief paragraphs, while in the instructions given to Culpeper in that year there were seventy-five paragraphs, and in those to Howard in 1683 there were seventy-nine paragraphs. By 1705 the increase is shown in the instructions to Nott which comprised one hundred and fifty paragraphs. While those sent to Dunmore in 1771 contained only one hundred and eighteen,, these paragraphs were, however, very long. A careful comparison of all the instructions to the governors from Culpeper (1682) to Dunmore (1771) shows that during this period the policy of the British government in regard to the colony was practically uniform. For clauses in these instructions commanding similar action, especially after Howard (1683), not only follow one another quite regularly but in many cases the identical phraseology is used. There were, of course, special directions regarding matters peculiar to certain administrations, but these were usually given in "additional" instructions and in circular letters. The similarity of the formal, regular instructions issued to the governor when he entered upon his term of service is most striking during the period indicated. In some of the

<sup>1</sup> *Journal Board of Trade*, vol. xlvii, p. 182; *Journal Council of Va.*, MS., 1698-1703, pp. 82, 83; *Cal. St. P. Col.*, 1697-1698, no. 767; Beer, *Origins*, p. 316.

later documents the apparent changes are, in fact, only the clauses of previous instructions more minutely explained and more strongly emphasized, and this in some instances accounts for the increase in the paragraphs. Since so much stress was laid by the home government on the exact conformity to these instructions by the governor, it would certainly seem that any marked changes in the policy of the home government regarding the colony would be indicated in them. The changes that do occur seem not to be, in fact, indicative of the policy of the British government, except as an attempt to apply more effectively an already well-established policy. The similarity of the formal instructions sent to all of the governors not only in the American colonies but also in the West Indies shows that the British government was endeavoring to apply to them all a generally uniform policy. There are here and there in the later instructions, it is true, signs of a greater determination on the part of the home government to force the colonists to submit to this policy, since the effort to accomplish this end through the royal governors had, to some extent, failed. A circular letter, under date of June 21, 1768, from the British government to each of the governors in America seems to indicate a plan to revise the formal instructions:

It having been represented that the general instructions given by his majesty to the governors of the American colonies, have from a variation in the state and circumstances of the said colonies become in many parts improper and unnecessary or inadequate to the object of them, I have the king's command to desire you will with the greatest attention and with all convenient dispatch, consider those given to you for your guidance and direction.<sup>1</sup>

Each governor was thus requested to suggest changes, but

<sup>1</sup> *C. O.* 5, 241, p. 79.

the next instructions to the governor of Virginia in 1771 show that nothing was done in regard to the matter.

Matters affecting every phase of the government and the life of the colony were included in the formal instructions, but those given the most prominence may be summed up as follows:—the Council: its functions, and its relation, especially to the governor; the Assembly; the royal supervision of legislation, the use of the suspending clause being emphasized, and the recommendation of new laws by the governor; revenues: the royal revenues had to be conserved regardless of the laws or conditions of the colony, the governor was to endeavor to improve them and also to give special attention to the prevention of fraud; trade: special explicit instructions were issued to the governor in regard to the execution of the several Navigation Acts and other laws concerning trade; encouragement was to be given to British merchants, and most careful attention was to be devoted by the governor to trade in general. The governor kept the home government constantly informed as to conditions in the colony, and requested advice as to the proper course to be pursued. The fact that the instructions were, in all essentials, practically the same after 1683, and certainly after 1705, indicates that the requests of the governor for directions in matters peculiar to his own administration were not answered through the formal instructions, but by means of the usual correspondence through the Board of Trade and by additional instructions and circular letters. The formal instructions were intended to contain the definite, fixed policy of the home government upon all questions relating to the colony. There were, in the formal instructions specific directions regarding matters to which the governor, from the very nature of his office, would be expected to give his attention. Such, for example, as the erection of fortifications, promoting trade with the Indians, punishing

drunkenness and all vice, erection of public workhouses for employing the poor, building of towns, regulating all salaries, the treatment of Catholics, the exemption of planters from unnecessary demands in regard to military duty, and to see that a list of all marriages was posted in the churches. Some of the various matters included in the additional instructions were the suppression of Bacon's Rebellion, the royal disapproval of certain acts of Assembly, the insistence upon the suspending clause to certain acts of Assembly, the granting of land, the naturalization of aliens, the plans of campaign in the French and Indian War, and certain acts of Parliament. The circular letters included directions regarding detailed matters concerning all of the colonies. The variety of matters treated in these minute formal and additional instructions and circular letters indicates how completely the home government wished to control the actions of the governor, and to dictate the system of administration in the colony. We shall notice later to what extent the instructions were actually executed, in order to ascertain whether the governor found it practicable to endeavor to enforce every clause of them regardless of conditions in the colony.

The governor communicated regularly with one of the principal secretaries of state, and the Board of Trade, and according to royal order furnished every six months a full account of the affairs of the colony to the Board of Trade, to the lords of the treasury and to the commissioners of the customs.<sup>1</sup> The account of the receipts and disbursements of the revenues was sent every six months to the auditor-general of the colonies, and duplicates also furnished to the

<sup>1</sup> *Journal Board of Trade*, vol. iv, p. 204; *Cal. St. P. Treas.*, 1731-1734, pp. 403, 454; *Journal Council of Va.*, MS., 1698-1703, p. 139; *McDonald Papers*, vol. v, p. 100; *Dinwiddie Papers*, vol. i, pp. 322, 339; vol. ii, pp. 50, 429, 624.

other officials just mentioned. Every three months, or oftener, he sent to the lords of the treasury and the commissioners of the customs a list of all ships trading in the colony, also a list of bonds taken of masters of ships and the invoices of the lading of ships.<sup>1</sup> All reports and accounts were forwarded by the governor to the home government through the Board of Trade. The naval officers' and collectors' accounts, the quit rents and other revenues, the treasurer's account, the list of ships, journals of the Council and the House of Burgesses, addresses of the governor to the General Assembly, proclamations, treaties with Indians, tables of all fees, and, in fact, the reports of every detail of the government were regularly sent to the Board of Trade.<sup>2</sup> In order that the home government might keep in constant communication with the governor, and also that he might not be given too much power, it was explicitly stated in his instructions, especially after 1680, that he should not leave the colony under any circumstances, not even for a few weeks, without first obtaining permission from the home government.<sup>3</sup> Culpeper, for disobeying this royal injunction and returning to England, and also for accepting a gift from the assembly, was removed from office. Howard, who succeeded him, did not presume to go to New York on account of his health until leave to do so had been granted.<sup>4</sup> A little later, however, he and the succeeding

<sup>1</sup> Instructions to the governors,—see bibliography; *Journal Board of Trade*, vol. liii, pp. 40, 42, 125; *Sainsbury Papers, 1706-1714*, p. 420.

<sup>2</sup> *Journal Board of Trade*, vol. xii, p. 202; vol. xv, p. 216; vol. xxxii, p. 122; vol. xxxvi, p. 258; vol. xxxviii, p. 224; vol. lx, p. 334; vol. lxii, p. 252; vol. lxix, pp. 39-43; vol. lxx, pp. 14-15; vol. lxxi, pp. 70-71; vol. lxxii, pp. 420-421; vol. lxxiv, pp. 390-392.

<sup>3</sup> Instructions to the governors; *Cal. St. P. Col., 1685-1688*, nos. 1694, 1722; 1693-1696, no. 958; 1697-1698, no. 767; *Journal Board of Trade*, vol. xi, p. 80; vol. lxv, p. 197; vol. lxxiii, p. 318.

<sup>4</sup> *Cal. St. P. Col., 1685-1688*, no. 1323.



governors were permitted by their instructions to go to New York or to other American colonies, for their health for a period of two months, without waiting to hear from the home government, but could not return to England without first getting permission.<sup>1</sup>

The salary received by the governor varied considerably during the colonial period. From 1624 to 1628 his support was entirely derived from the labor of the servants attached to the land which was set apart for his use, a few fines and forfeitures, the revenue from land grants, and the privilege of exporting a specified quantity of tobacco free of duty. In 1628, Harvey was granted, by order of the Privy Council out of the surplus from the customs and other royal duties from Virginia, £500 for his transportation to the colony and £1000 for his annual salary.<sup>2</sup> This appropriation of £1000 sterling, in tobacco, was payable out of the customs on tobacco exported to England.<sup>3</sup> During the civil war between Charles I and Parliament this salary was neglected, and the Assembly temporarily provided for the support of the governor by a public tax in provisions rather than money or tobacco. This first act showing that the colony paid the governor's salary was passed in March, 1642-3, with great hesitation, and with the assertion that it was not to be a precedent, but was enacted because conditions in England deprived the governor of the "pension and allowance from his majesty."<sup>4</sup> But the salary of the governor was never again to be paid out of the British treasury. The method

<sup>1</sup> *Journal Board of Trade*, vol. vi, p. 143; *Acts Privy Council, Col.*, 1680-1720, no. 128; Instructions to governors.

<sup>2</sup> *Acts Privy Council, Col.*, vol. i, no. 210.

<sup>3</sup> Harvey complained in 1638, that his salary was four years in arrears, thus indicating that it was not punctually paid. *Cal. St. P. Col.*, 1574-1660, p. 276.

<sup>4</sup> Henning, vol. i, p. 280; *Va. Mag. Hist. and Biog.*, vol. iii, p. 102.



of providing his salary by public tax was continued during the period of the Protectorate and was fixed at 25,000 pounds of tobacco a year.<sup>1</sup> In 1660, Berkeley had a salary of £700, paid out of the duty of two shillings per hogshead on exported tobacco, and fifty thousand pounds of tobacco, besides certain fees.<sup>2</sup> In 1661 the Privy Council granted him, as a gift for his loyalty to the crown, £2000 sterling from the customs duty on tobacco from Virginia paid at English ports.<sup>3</sup> In 1662 the Council of Trade and Plantations granted him an annual salary of £1000, to be paid out of the revenue of two shillings per hogshead on exported tobacco,<sup>4</sup> and in 1665 he was voted an additional £200 by the Assembly as an expression of their appreciation of his services,<sup>5</sup> and also had about £500 in perquisites, making the total salary about £1700.<sup>6</sup> Culpeper, on the ground of being an English peer, obtained of the king, a salary of £2000, besides £150 a year for house rent, and perquisites amounting to from £800 to £1000, while the Assembly granted him £500 sterling as a special recognition of his services.<sup>7</sup> The annual salary of £2000 was continued to succeeding governors and paid quarterly out of the two

<sup>1</sup> Hening, vol. i, p. 423.

<sup>2</sup> Hening, vol. ii, p. 12; *Journal House of Burgesses, 1659/60-1693*, pp. 5, 7.

<sup>3</sup> *Cal. St. P. Treas. Books, 1660-1667*, pp. 296, 553.

<sup>4</sup> *British Museum Additional MSS.*, no. 30372, p. 46.

<sup>5</sup> This was not intended to be continued to other governors, *Journal House of Burgesses, 1659/60-1693*, p. 30.

<sup>6</sup> Hening, vol. ii, p. 314; R. Beverley, *The History of Virginia*, p. 188; H. Hartwell, J. Blair, and E. Chilton, *An Account of the Present State and Government of Virginia*, p. 30; *British Museum Add. MSS.*, no. 30372, p. 46.

<sup>7</sup> Hartwell, Blair and Chilton, p. 31; *Journal House of Burgesses, 1659/60-1693*, p. 143.

shillings per hogshead duty on tobacco exported, and the duties paid on ships trading in the colony.<sup>1</sup>

Near the close of the seventeenth century the lieutenant-governor, during the occasional absence of the governor, received a salary at the rate of £1000 a year and half the perquisites, and while the governor was in the colony he received £300 a year out of the royal quit-rents.<sup>2</sup> After 1704 the governor-in-chief (with two exceptions only) remained in England on a salary of £1200, while the lieutenant-governor in the colony received £800. The full salary of £2000 was paid to the lieutenant-governor, who sent the governor-in-chief £1200. It was necessary, however, for the governor-in-chief to have a warrant under the royal sign manual authorizing him to receive his salary.<sup>3</sup> By 1732 the total income from salary and perquisites was £2400, half of which was received by the lieutenant-governor.<sup>4</sup> The income from the office of governor increased by the time of the Dinwiddie administration (1752), for he agreed with the governor-in-chief to pay him annually £1665. Assuming that Dinwiddie received the usual salary of a lieutenant-governor, the total amount of the income

<sup>1</sup> *Cal. St. P. Treas. Books and Papers, 1735-1738*, p. 530; *Journal Council of Va.*, MS., 1721-1734, p. 349; *Dinwiddie Papers*, vol. i, p. 390; *British Museum Add. MSS.*, no. 30372, p. 46; *C. O.* 5, 67, p. 585.

<sup>2</sup> Blathwayt's *Journal*, vol. i, pp. 378, 382; *C. O.* 5, 1361, p. 134; *Journal Council of Va.*, MS., 1698-1703, p. 47; *Cal. St. P. Col.*, 1689-1692, no. 2098; *McDonald Papers*, vol. vi, pp. 79, 225.

<sup>3</sup> *King's Warrant Book*, vol. xxxii, p. 488, in *Cal. St. P. Treas. Books and Papers, 1735-1738*, p. 530; *British Museum Add. MSS.*, no. 30372, p. 46. In nearly all the other colonies the salary of the governor was £1000, while in Virginia, that official received the largest salary, with perhaps the exception of New York, which colony also paid the governor £2000 near the end of the colonial period. E. B. Greene, *Provincial Governor*, p. 60.)

<sup>4</sup> *Fulham MSS.*, Virginia, 1st box, no. 164.

from the office of governor was between £2500 and £3000.<sup>1</sup> By 1763, when the total salary was £3000, including perquisites, the lieutenant-governor of course received half of that amount.<sup>2</sup> The perquisites of the governorship accounted for this increase, for by the time of the Revolution the regular salary was £2000, while the total income was about £4000.<sup>3</sup> As there was no lieutenant-governor at that time, Dunmore received this total amount.

As the colony grew in size and importance it was but natural that the amount of the fees paid the governor should increase, and that the privilege of collecting them should have been abused by such governors as Culpeper, Howard and Dinwiddie. The Privy Council, upon the complaint of the colonists, ordered Howard to discontinue the fee of two hundred pounds of tobacco charged for affixing the public seal.<sup>4</sup> The attempt of Dinwiddie, notwithstanding this example, to charge an additional fee for affixing the seal of the colony to land grants proved unsuccessful. The governor's clerk, near the end of the colonial period, was granted certain fees for the commissions which he was authorized by the governor to issue. These were, however, considered the fees of the governor, and were objected to by the House of Burgesses when Dunmore became governor. They had not been established by law, and notwithstanding his request that they should be continued, the burgesses abolished them. Dunmore stated that these fees had "usually" been paid to the clerks of his predecessors.<sup>5</sup> In

<sup>1</sup> *Dinwiddie Papers*, vol. ii, p. 534.

<sup>2</sup> Fauquier to Board of Trade, in *British Museum, King's MSS.*, no. 205, p. 519.

<sup>3</sup> *British Museum Add. MSS.*, no. 22129, p. 12.

<sup>4</sup> *Acts Privy Council, Col.*, vol. ii, no. 320; *Journal House of Burgesses*, 1659/60-1693, p. 59.

<sup>5</sup> *Journal House of Burgesses*, 1770-1772, pp. 173, 182.

the resolution passed by the burgesses, it was, however, declared that those fees were "unknown" to the law, and that they were then for the "first time regularly informed" of them.<sup>1</sup> Had such fees been demanded by many governors, it is quite reasonable to suppose that the burgesses would have known of it. It may also have been true that the fees charged by the governor, which seem to have been mostly established by custom rather than by law, were gradually increased. The fee of £1 for affixing the seal of the colony was, no doubt, the basis upon which the fees allowed the governor's clerk were established. While the burgesses were for the first time "regularly" informed by Dunmore of the fees in question, still they were not ignorant of the custom of paying fees to the governor. The fees here complained of were created by Dunmore for the benefit of his clerk, whom he had promised a salary of £500. Dunmore realized that a dispute over this matter would antagonize the House, so he readily acquiesced. There were but few fees charged by the governor in the seventeenth century, and there seems to have been no serious objection to the fees regularly collected by him until the instance just cited.<sup>2</sup>

<sup>1</sup> Fees for commissions: County lieutenant £2; colonel £1 1s. 6d.; lieutenant colonel £1 1s. 6d.; major £1 1s. 6d.; sheriff £1 5s.; inspector 15s.; assistant inspector 10s.; coroner 10s.; quartermaster £1; escheat master £1 1s. 6d.; commissary of stores £1 1s. 6d.; Mediterranean pass £1 15s.; presentation to parish £1 10s. *Journal House of Burgesses, 1770-1772*, p. 173.

<sup>2</sup> The principal fees paid the governor after 1700: £1 for affixing seal of colony; £1 1s. 6d. for signing land patents; £1 10s. on ship of 100 tons or over; 20s. on ship less than 100 tons; £1 for every protest; £1 1s. 6d. for swearing person to the register of a ship; 35s. increased to £1 15s. for "ordinary" license; 20s. for marriage license; 50s. for naturalization papers; and tribute beaver (a tribute in the form of beaver skins paid annually by the Indians, and valued at £50). (Hening, vol. iii, pp. 397, 435, 445; vol. vi, pp. 73, 84; Blathwayt's *Journal*, vol. i, p. 350; *British Museum King's MSS.*, no. 205, p. 519; no. 206, p. 264.)

There was, throughout the seventeenth century, complaint of the insufficient remuneration of the office of governor.<sup>1</sup> In the eighteenth century, however, the salary and fees were well established, and any complaint would not have resulted in an increase. There seems to have been no effort made to secure additional salary, as the governor was apparently satisfied with his compensation. Dinwiddie did, however, express the hope that as the office of governor-in-chief had become vacant by the death of the Earl of Albemarle, it might remain such for a few years in order that he might receive the full salary of governor. In a letter to James Abercromby, agent of Virginia (March 17, 1755), he said:

The death of Lord Albemarle gave me great concern, and if his majesty should think proper to keep it open a few years, the salary would reimburse a very great expense I have been at in the public service these last two years, and if properly considered, will be no very great favor.<sup>2</sup>

This request seems to have been granted for about a year and a half. In addition to the regular salary, the fees which increased after 1700, the exemptions and privileges enjoyed by the governor, he was further favored, after 1736, by the exemption from customs duty on the Madeira wine which was imported for his use.<sup>3</sup> The governor's salary of £2000 alone afforded him, according to Bruce, an income equal in purchasing power to \$50,000 in modern currency.<sup>4</sup> If this be true for the eighteenth century, then Dunmore, whose

<sup>1</sup> P. A. Bruce, *Institutional History of Virginia in the Seventeenth Century*, vol. ii, p. 340. In the seventeenth century this salary was paid in tobacco.

<sup>2</sup> *Dinwiddie Papers*, vol. ii, p. 3.

<sup>3</sup> This exemption was limited to 10 pipes of wine a year. Hening, vol. iv, p. 474; vol. v, p. 318; vol. vii, p. 273.

<sup>4</sup> *Instit. Hist. of Va.*, vol. ii, p. 350.



total income was £4000, really received a sum equivalent to \$100,000. While it is quite difficult to prove that this estimate is incorrect, still it is seriously questioned, for the income of a provincial official hardly aggregated so much. The governor did, however, during the eighteenth century, live very comfortably. Until about 1720 he was granted a special appropriation for house rent, but after that time there was an executive mansion. A contemporary, writing in 1724, describes it as a

magnificent structure, built at the public expense, finished and beautified with gates, fine gardens, offices, walks, a fine canal, orchards, etc., with a great number of the best arms. At the governor's house upon birth nights and at balls and assemblies, I have seen as fine an appearance, as good diversion, and as splendid entertainments, in Governor Spotswood's time, as I have seen anywhere else.<sup>1</sup>

The same author maintains that the social conditions in the capital (Williamsburg) at this time were such that the governor would be expected to live in a rather aristocratic manner. He states: "The people live in the same neat manner, dress after the same modes, and behave themselves exactly as the gentry in London."<sup>2</sup>

When the senior councillor served as governor he was usually allowed, in addition to his salary as councillor, £500 a year out of the governor's salary, but the other members of the Council received no increase while assisting him in this capacity.<sup>3</sup> From about 1725, however, he received half of the salary and half of the perquisites of the governor.<sup>4</sup>

<sup>1</sup> H. Jones, *The Present State of Virginia*, p. 31.

<sup>2</sup> *Ibid.*, p. 32.

<sup>3</sup> Beverley, p. 189; Blathwayt's *Journal*, vol. i, p. 383.

<sup>4</sup> Instructions to the governors.—see bibliography; *Sainsbury Papers*, 1720-1730, p. 281.



The governor in Council signed the warrant on the receiver-general for his own salary, along with those of the other officers of the colony, to be paid out of the revenue of two shillings per hogshead on exported tobacco.<sup>1</sup> This was subject to review by the home government, and the warrant for these salaries was, in effect, issued by order of the lords of the treasury.<sup>2</sup> The claim of the governor for unpaid salary, and all controversies regarding salaries, were referred to the lords of the treasury.<sup>3</sup>

In the formal instructions to the governor, it was specified that he was not to accept any gift, especially from the Assembly, for in so doing he would become obligated to the people of the colony. This clause was included in the instructions, because "several inconveniences" had arisen to the British government, by the bestowal of presents upon the governors of certain colonies, by the general assemblies.<sup>4</sup> The violation of this order occasioned the "highest displeasure" of the king, and was considered sufficient cause for the recall of the governor.<sup>5</sup> In certain cases, however, he might accept a gift from the assembly provided permission were first granted by the home government. The first governor to receive such a present was Berkeley, who was granted £200 a year in addition to his salary as an expression of the appreciation of the assembly of his ser-

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, p. 43; 1705-1721, p. 43; 1721-1734, p. 69; *Journal Board of Trade*, vol. vi, p. 298.

<sup>2</sup> *Cal. St. P. Col.*, 1675-1676, no. 968; 1677-1680, nos. 539, 1162; *Cal. St. P. Treas.*, 1708-1714, p. 573; 1739-1741, pp. 23, 26, 160.

<sup>3</sup> *Journal Board of Trade*, vol. iii, pp. 82, 89, 101; *Cal. St. P. Treas.*, 1731-1734, pp. 214, 472; 1720-1728, p. 189; Andrews, *Colonial Self-Government*, p. 229.

<sup>4</sup> Instructions to the governors from Culpeper (1682) to Dunmore (1771).

<sup>5</sup> *Acts Privy Council, Col.*, 1680-1720, no. 425.

vices.<sup>1</sup> There seems to have been no objection whatever to his accepting it, as no mention of it occurs in the correspondence of the period. Such an expression on the part of the representatives of the people of the colony regarding a royal governor at the moment when Charles II was re-establishing royal government in the colony, was no doubt quite welcome. The next governor whom the Assembly desired to favor was Culpeper. He, without waiting for permission from the home government, accepted the gift of £500. This act, together with leaving the colony without permission, was considered just reason for his removal.<sup>2</sup> The third governor upon whom the Assembly bestowed a present was Nicholson. He did not, however, presume to receive the gifts of £300 and £200 until leave had been granted to do so.<sup>3</sup> When Gooch became governor (1727) the Council voted him £300 sterling and the burgesses £500 in Virginia currency. As soon as the Board of Trade knew of his having accepted these gifts, he was reprovved for acting contrary to his instructions. In replying, he stated that the other governors of the colony had usually received such presents on their arrival and that he hoped to be allowed the same indulgence. This was a somewhat exaggerated statement, for only the three governors just mentioned, so far as can be ascertained, had received gifts. Although the Board of Trade and the Privy Council were at first opposed to allowing him to keep them, still this apparent disapproval was removed and he was permitted to retain them.<sup>4</sup>

<sup>1</sup> Hening, vol. ii, p. 314. This annual gift was first made in September, 1674 to be continued during Berkeley's administration. He ceased to be governor April 27, 1677. This gift, therefore, must have been certainly £400, and probably £600.

<sup>2</sup> *Act Privy Council, Col., 1680-1720*, no. 425.

<sup>3</sup> *Cal. St. P. Col., 1689-1692*, nos. 1518, 1820, 2211.

<sup>4</sup> *Journal House of Burgesses, 1727-1734*, p. 28; *Acts Privy Council, Col., 1720-1745*, no. 180.

The last example of the Assembly bestowing a gift upon the governor was in the case of the granting of £500 to Dinwiddie in 1752 as he entered upon his administration.<sup>2</sup> There is no mention of this gift in the correspondence of Dinwiddie with the home government. It is hardly possible, however, that the Board of Trade could have failed to notice in the Journal of the House of Burgesses the two entries in regard to this present and the formal acceptance by the governor. Still, it seems that Dinwiddie was not reprimanded for thus violating his instructions. Perhaps the quiet and prosperous administration of twenty-two years which preceded that of Dinwiddie had impressed the Board of Trade very favorably. Gooch had been permitted to receive £800, the largest gift ever bestowed upon a governor, and had proved to be the most successful and efficient executive in the history of the colony. This fact, probably, influenced the Board of Trade to allow the matter to pass unnoticed.

There were, as just shown, so far as can be ascertained, only five of the nineteen governors who served from 1624 to 1775 who were favored with presents by the Assembly. Three of these governors served between 1660 and 1700, and the other two after 1700. It was, therefore, not a custom of the Assembly to bestow gifts upon the governor. It is of interest to know why these five should have been so favored. If it were the purpose of the Assembly thus to attempt to induce the governor to surrender some of his power, the plan certainly failed, for four of the five were very dictatorial and the fifth, who received the largest gift, worked harmoniously with the Assembly yet did not seem to surrender in any essential matters his executive power. We are led to conclude that the Assembly was really sincere

<sup>1</sup> *Journal House of Burgesses, 1752-1755*, pp. 96, 99.

and that the presents were the expressions of a desire to show a friendly spirit towards the royal governor as soon as he entered the colony. For if the Assembly had sought to deprive the governor of a part of his power, it is quite reasonable to conclude that the period of Gooch's administration afforded a good opportunity for the accomplishment of the purpose. When the burgesses, refusing to submit to the imposition of the pistole fee on land grants placed by Dinwiddie, sent an address to him showing him the injustice of the demand, no reference was made to the gift of £500 which he had received from the Assembly about a year and a half previous to that time. They simply maintained that the pistole fee was an infringement upon their rights, and did not attempt to use the fact of his having accepted the present in their effort to prevent his doing what they claimed he was not justified in doing.<sup>1</sup> The Assembly did encroach upon the powers of the governor from 1700 to 1775, but the gifts bestowed upon two of the governors during this period had no effect upon that result.

It is not strange that certain governors had a personal interest in the trade of the colony, and that the Board of Trade in writing to the lords justices of England regarding the instructions to be sent to the governor should comment on the possibility of the encouragement of fraud by the governor, since he and the Council were so closely allied.<sup>2</sup> It was generally known that the governor and Council usually during a certain period about 1700, bought privately the quit rent tobacco which should have been publicly sold at the county courts.<sup>3</sup> The conduct of Nicholson, who, al-

<sup>1</sup> *Journal House of Burgesses, 1752-1755*, p. 143.

<sup>2</sup> *Cal. St. P. Col., 1697-1698*, p. 401; *Cal. St. P. Treas., 1557-1696*, p. 155; *Cal. St. P. Treas. Books, 1660-1667*, p. 288.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 57; *Sainsbury Papers, 1691-1697*, p. 342.

though serving as governor, performed, upon the death of the auditor, the duties of that office for nine months, was not above censure.<sup>1</sup> The home government thought it necessary to place certain restrictions on the governor in regard to issuing warrants for the payment of public money, and required that a full statement should be made of all disbursements.

As the chief executive of the colony, the governor had many general administrative powers and duties. Upon his arrival, the first duty devolving upon him was to publish his commission. His instructions were at first disclosed to the Council and to the House of Burgesses, but after about 1685 they were not fully made known, even to the Council, unless he considered it advisable to convey a portion of them to that body. In connection with publishing his commission, he was required to take the oaths appointed by Parliament to be administered, the oath for the due execution of the office of governor and the oath for the execution of the acts of Parliament relating to the colonies, which oaths were administered by the Council. It is quite noticeable that, although he did take the oath of office as governor of the colony, still the interests of the crown and not those of the colonists were emphasized. The governor administered the oaths which were taken by the members of the Council and the more important officials of the colony.

The appointment of all the more important officials of the colony was in the hands of the governor. Those who received their commissions from England, including the Council, were in most cases recommended by him, or, if possible, he was consulted before the appointments were made. The governor usually submitted his recommendations and appointments to the Council, and when that body was com-

<sup>1</sup> Bassett, p. 48.



posed of influential men who wielded a large part of the executive power, the appointments were sometimes dictated by them.<sup>1</sup> The Council seems to have been considered by the colonists as sharing with the governor the appointive power, as indicated by the petitions addressed to the "Governor and the Council" for license to practice law, for no one could act as an attorney-at-law until he had obtained the governor's approval.<sup>2</sup> That the governor was, in some cases, controlled in making recommendations and appointments by family influence and political cliques, which resulted therefrom, is quite evident.<sup>3</sup> Any serious controversy between the governor and the Council as to the power over appointments was usually referred to the Board of Trade for settlement.<sup>4</sup> The governor did not have absolute power in regard to removing the officials of the colony, for not only in the case of the suspension of a councillor or other royal appointees but also in removing a judge, a sheriff, a justice, "or other officers or ministers" appointed by and during the pleasure of the governor he was explicitly instructed to notify the home government. In his instructions it was stated that this matter was "to be signified in the fullest and most distinct manner to us, by one of our principal secretaries of state, by the first opportunity after such removal."<sup>5</sup> Before 1680 lawyers were licensed by the quarter court, but after this date the governor and Council

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 107; *Sainsbury Papers*, 1705-1707, p. 468; *McDonald Papers*, vol. vi, pp. 124-125.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 251; *Va. Mag. Hist. and Biog.*, vol. xvii, pp. 147, 151; *Executive Papers*, 1735-1743; *Cal. Va. St. P.*, vol. i, p. 23.

<sup>3</sup> *Cal. St. P. Col.*, 1669-1674, nos. 540, 571.

<sup>4</sup> *Journal Board of Trade*, vol. xxvi, p. 416; *Journal Council of Va.*, MS., 1705-1721, p. 342.

<sup>5</sup> Instructions to the governors from Howard (1683) to Dunmore (1771).



licensed them and could suspend or recall their license.<sup>1</sup> Before 1646 the governor appointed the clerks of the county courts, but in that year this power was granted to the secretary.<sup>2</sup>

The governor, with the advice of the Council, was to regulate all salaries and fees, and to see that a table of fees was hung up where they were to be paid, copies of which were to be sent to the home government. But the governor's prerogative in regard to regulating fees was not exclusive, for the Assembly passed acts for this purpose.<sup>3</sup> He was to see that councillors, judges, civil and military officers, the clerk of the Assembly, gunners, and all other officers of the colony were paid out of the revenues the usual salaries, "as already established, or such others," as he, "with the advice of our Council, shall think requisite and reasonable." While the power of the governor and Council in this respect was apparently arbitrary, he was, however, required to transmit every six months an account of all salaries to the Board of Trade and to the lords of the treasury.<sup>4</sup>

Since he was the highest representative of the crown in the colony, all addresses and appeals to the king were to be sent through him, and also the accounts of all the officials of the colony.<sup>5</sup> The question of obtaining land was always of vital importance to the colony. All land grants were issued by the governor and Council, and controversies re-

<sup>1</sup> O. P. Chitwood, *Justice in Colonial Virginia*, Johns Hopkins University Studies, ser. xxiii, nos. 7-8, pp. 116-119.

<sup>2</sup> Bruce, *Instit. Hist. of Va.*, vol. i, p. 588.

<sup>3</sup> Hening, vol. iii, p. 195; *Journal House of Burgesses, 1742-1747*, pp. 146, 182; 1752-1755, pp. 15, 16.

<sup>4</sup> Instructions to the governors from Howard (1683), to Dunmore (1771).

<sup>5</sup> *Journal Council of Va.*, MS., 1698-1703, p. 160; 1705-1721, p. 18; 1721-1734, p. 166; *Cal. St. P. Col.*, 1697-1698, no. 291.

garding land titles were decided by them.<sup>1</sup> The governor was, however, instructed from time to time by the home government regarding certain changes thought desirable as to granting land, and especially as to large tracts.<sup>2</sup> In the granting of land on the south side of Blackwater Swamp, the Board of Trade had access to the book of entries, and directed the governor very minutely with reference to the distribution of that land.<sup>3</sup> The governor received special instructions as to granting the Swiss immigrants land on their arrival. In the instructions it was stated: "Our will and pleasure, therefore, is, and we do hereby direct and require you, upon the arrival of the said inhabitants of Berne, or any of them, to allot them lands on the southwest branch of the Potomac River."<sup>4</sup> The smallest as well as the largest land grants were made, subject to the approval of the home government. An applicant for land might, on the refusal of the governor and Council to issue him a grant, petition the Board of Trade. An instance of this occurred as late as 1772.<sup>5</sup>

In the instructions to the governor it was specified that it was the king's pleasure, that he should consider it "an especial duty" incumbent upon him, "to take care of the church" in the colony. He was to see that each parish was supplied with a minister and that the vestry made the necessary provision for his support. Ministers were ordained by

<sup>1</sup> *Cal. St. P. Col.*, 1661-1668, no. 1513; *Rappahannock County Records*, 1695-1699, pp. 9, 116; *Va. Mag. Hist. and Biog.*, vol. xiii, p. 7.

<sup>2</sup> *Journal Board of Trade*, vol. xix, p. 62; *Cal. St. P. Treas.*, 1708-1714, p. 544.

<sup>3</sup> *Journal Board of Trade*, vol. xviii, p. 234; *Journal Council of Va.*, MS., 1698-1703, pp. 117-118.

<sup>4</sup> *C. O.* 5, 210, p. 168.

<sup>5</sup> *Journal Board of Trade*, vol. xxxix, p. 222; vol. xli, p. 33; vol. li, p. 55; vol. liii, pp. 44, 64, 122; vol. lvi, p. 244; vol. lvii, pp. 45, 61; vol. lxx, p. 291; vol. lxxviii, pp. 15, 24; vol. lxxx, p. 26.

the bishop of London and recommended to the governor, who "presented" them to the vestries. It was necessary for those in the colony desiring to become ministers to secure letters from the governor commending them to the bishop for ordination. The vestry, in some instances, refused to receive the minister presented by the governor, but usually the authority of the governor was recognized. The governor sometimes compromised with the vestries, with whom, owing to their influence, he did not wish to dispute this power.<sup>1</sup> All complaints against ministers or vestries were made to the governor and Council sitting as the General Court.<sup>2</sup> William and Mary College was considered, to some extent, a royal institution, and the governor was expected to devote some attention to its interests. He was also to see that the instructions regarding school-masters were executed, so that no one should be permitted to leave England for the purpose of teaching in Virginia without license from the Bishop of London, and that no one already in the colony be permitted to teach without license from the governor.<sup>3</sup>

In regard to the governor's power to pardon all crimes except treason and wilful murder, it is to be observed that in case of these two exceptions, execution was suspended till the king's pleasure was known. He was empowered to remit all fines or forfeitures accruing to the crown to the

<sup>1</sup> H. R. McIlwaine, *The Struggle of Protestant Dissenters for Religious Toleration in Virginia*, Johns Hopkins University Studies, ser. xii, no. 4, pp. 10-13; *Fulham MSS., Virginia*, 1st box, nos. 39, 44, 45, 47, 52, 104.

<sup>2</sup> *Journal Council of Va.*, MS., 1698-1703, p. 170; 1705-1721, pp. 28, 29, 199; 1721-1734, pp. 142, 424; *Fulham MSS., Virginia*, 2nd box, nos. 125-127.

<sup>3</sup> *Cal. St. P. Treas.*, 1708-1714, p. 97; *Journal Council of Va.*, MS., 1698-1703, p. 105; 1705-1721, p. 115; Beverley, p. 214; *Essex County Records*, pp. 48, 49; Instructions to the governors.

value of £10, and if over that amount he might suspend payment until royal instructions could be obtained.<sup>1</sup> It was further specified in the instructions that he was not to dispose of any forfeiture of escheat until an examination of the matter had been made upon oath by the proper officer, and the case reported to the lords of the treasury and to the Board of Trade and direction regarding it sent to him. He had no authority to grant exemption from the customs duties, but always forwarded any request for such to the home government.<sup>2</sup>

Although petitions for naturalization were presented to the governor, still his power in this respect was limited by the Assembly.<sup>3</sup> The royal supervision of this matter is shown by the secretary of the colony forwarding, in 1745, to the Board of Trade, pursuant to an act of Parliament, certificates of naturalization of certain Germans and others issued by the General Court.<sup>4</sup> Lists of the persons naturalized in the colony were sent to the British government. The governor was, after 1683, the keeper of the seal of the colony, but, for the sake of convenience, permitted it to remain in the secretary's office.<sup>5</sup> Among the administrative

<sup>1</sup> *Journal Board of Trade*, vol. lxxiii, p. 265; lx, p. 143; *Dinwiddie Papers*, vol. i, pp. 384, 385; *Va. Mag. Hist. and Biog.*, vol. iii, p. 116; *Hening*, vol. iii, p. 563; *McDonald Papers*, vol. vi, p. 122.

<sup>2</sup> *Blathwayt's Journal*, vol. i, p. 351; *Acts Privy Council, Col.*, vol. i, no. 275.

<sup>3</sup> *Hening*, vol. iv, p. 548; *Journal House of Burgesses, 1659/60-1693*, p. 11; *Executive Papers, 1692*.

<sup>4</sup> *Acts Privy Council, Col.*, vol. ii, no. 783, p. 1103; *C. O.* 324, 55, p. 11; *Journal Board of Trade*, vol. lii, p. 57; vol. liii, p. 39.

<sup>5</sup> Howard by his commission (1683) was made keeper of the seal and availed himself of this opportunity to increase his perquisites by imposing a fee of two hundred pounds of tobacco for affixing it, but this was discontinued in 1689 by order of the British government. *Journal House of Burgesses 1659/60-1693*, p. 59.)

powers of the governor was included the jurisdiction of certain matters of local interest to the county.<sup>1</sup>

After two years of almost absolute authority the Council, in 1609, was superseded by a governor, whose powers necessarily reduced the Council to a mere advisory board.<sup>2</sup> In 1624, when the colony became royal, the members of the Council were appointed by the king. The commissions to the governors for the next twenty-five years show the gradually increasing power of the Council, as authority was vested in the governor and Council jointly. There was in these commissions, which were addressed to the governor and Council, no definite statement as to the specific powers to be exercised by the Council. It was not long, however, before the conflict occurred, in which the governor refused to grant to the Council the share of the executive power which that body claimed. This controversy occurred in 1631, when Harvey, in a very dictatorial manner, denied the right of the Council to any real power in the administration of the government, and resulted in his temporary removal. But under Berkeley, Culpeper and Howard, the governorship was strongly emphasized at the expense of the Council. From an authority writing about 1698, we have evidence of the progress in the encroachment of the governor upon the power of the Council. The first step in this direction was taken with royal approval. As the king knew but few colonists, it was thought expedient to permit the governor to recommend persons to fill vacancies in the Council. The next was the royal instruction limiting the number of councillors to nine, or certainly ten.<sup>3</sup> The power of suspending a councillor, early granted to the governor,

<sup>1</sup> *Journal House of Burgesses, 1770-1772*, p. 276.

<sup>2</sup> The relation of the governor to the Council (1607-1624) will be treated more fully in the chapter on the Council.

<sup>3</sup> Hartwell, Blair and Chilton, pp. 22, 24, 56.



was not often exercised. It was maintained by Culpeper that if the governor had suspended Nathaniel Bacon, who was a councillor, the rebellion which he precipitated might have been averted. The other reasons given by this authority for the encroachment of the governor were the selfishness of the Council and their lassitude in exercising the power which they actually possessed. The councillors anxious to return to their homes did not usually wait to see the clerk draw up the orders of the Council regarding matters upon which they had voted. These orders were not, afterwards, read in Council, and the clerk, who was an appointee of the governor, quite naturally worded them according to the dictation of his superior. The action of the Council was thus frequently misrepresented, and new orders, contrary to those voted on by that body, were issued. But that which finished this work of subjecting the Council to the governor was the power he had of bestowing all the places of trust and profit, and the secret he found of bestowing them all upon the Council. He was, moreover, shrewd enough to shield himself from the displeasure of the king and the odium of the people by claiming that he always acted "with the advice of the Council."<sup>1</sup>

By 1690 the functions of the governor were, while not clearly separated from those of the Council, certainly more positively defined than in the earlier part of the century, but the exact relations between them continued, however, to be a matter of controversy. In the formal instructions to the governors, from Howard (1683) to Dunmore (1771), much attention was devoted to this relationship, and the first twelve or fifteen clauses were given up exclusively to this matter. From about the first decade of the eighteenth century the power of the Council increased; still, from the

<sup>1</sup> Hartwell, Blair and Chilton, p. 25.



instructions, it would seem that there was practically no change from about 1700 to 1771. This simply means that, so far as the theoretical position of the Council as outlined by the home government was concerned, there was no change for that period. It seems that the British government continued to consider the Council as hardly more than an advisory board to the governor, for the clause in the instructions forbidding his communicating to that body any of the instructions, except what should be deemed "convenient" for the royal service to be imparted to them, remained unchanged during the period just indicated. The governor was thus expected to exercise authority over the Council. It was, however, specified in the instructions that he should grant to the councillors freedom of debate and vote. While he could neither increase nor diminish the number of the Council, nor suspend any of its members without the approval of the home government, still he was given much power in recommending persons to fill vacancies. It was not the purpose of the British government that the governor should surrender to the Council any of the executive power, but it was expected that he would avail himself of the advice which such men would be capable of giving. In the next chapter it will be shown whether these theoretical powers of the governor over the Council were exercised in the practical administration of the government.

The first legislative Assembly met in 1619. After 1624, when the royal government was established in the colony, the policy of the crown was for a time apparently unsettled so far as the Assembly was concerned. No mention of the Assembly occurred in the commissions and instructions to the governor, and the only recorded legislation of the next five years is in the form of proclamations by the governor.<sup>1</sup>

<sup>1</sup> Hening, vol. i, pp. 129, 130.

It is, however, certain that the Assembly did not lapse altogether, for there is evidence that in 1627 the king recognized its existence and competency by submitting to it certain propositions relating to the tobacco trade.<sup>1</sup> The power of the Assembly was, however, questioned by the governor, who, assumed for himself the rights of taxation and legislation, which were again expressly denied by the Assembly in 1632.<sup>2</sup> This abuse of power by Harvey resulted in his temporary removal, but he was again forced upon the colonists. A few years later (1641) when Berkeley was appointed governor, the king in the instructions to him formally recognized the Assembly. He was to summon the Assembly once a year, or oftener if urgent occasion should require.<sup>3</sup> It seems that for some years previous to his appointment it was customary for the Assembly to convene annually. During the period of the Protectorate it met every two years or oftener, if necessary, and the power of the legislature was supreme at that time. After the Restoration (1660), Berkeley was instructed to call the Assembly within one month after assuming the duties of his office.<sup>4</sup> He really secured control of the Assembly by proroguing it from session to session and for several years the former power of this body was greatly reduced by the dictatorial measures of the governor.

By the beginning of the eighteenth century the royal instructions defined to some extent the relations of the governor to the Assembly, and made it quite clear that as chief executive of the colony he was to exercise general supervision over it. The instructions to the governors contained

<sup>1</sup> Hening, vol. i, pp. 129, 134; *Cal. St. P. Col.*, 1574-1660, pp. 86-90.

<sup>2</sup> Hening, vol. i, pp. 171, 196.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. ii, p. 281.

<sup>4</sup> *Ibid.*, vol. iii, p. 15.

matters relating to the Assembly and the legislation of the colony, upon which the home government had a definite policy. The governor was to suggest certain laws from time to time and to endeavor to have the grievances of the people settled through the legislature. But most of all, it was his prime duty to represent the royal prerogative in the colony, and to withstand any attempt on the part of the popular branch of the Assembly to encroach upon the authority of the crown. He had the power to call, to prorogue and to dissolve the legislature, and as the president of the Council to sit in the upper house. No act of Assembly was effective without his signature, and his veto was final, as the legislature could not pass any measure over his objection. He was to see that no law of an unusual or extraordinary nature was passed without a suspending clause rendering it inoperative until the king's pleasure should be known. He was, in fact, to send to England within three months after enactment all laws, in order that they might be either approved or disallowed, under penalty of the forfeiture of a year's salary should he fail to comply with this instruction. It will be seen in a later chapter to what extent these theoretical powers of the governor over the Assembly were rendered effective.

The king, according to English constitutional tradition, was "the fountain of justice and general conservator of the peace of the kingdom." A survival of this theory is to be found in the commission to the governor, who was empowered to establish courts and to appoint judicial officers. In the instructions, however, it was specified that in establishing or discontinuing a court he was to act only upon royal order. The governor's criminal jurisdiction seems for the most part to have passed away in the other colonies, but in Virginia the governor and Council, under the name of the General Court, continued to be the highest court in all cases.

criminal as well as civil.<sup>1</sup> Commenting upon the judicial power of the governor, a contemporary authority stated about 1698 that "as lord chief-justice of the king's bench and common pleas, and lord chief baron of the exchequer, the governor sits and presides in a court, which is all these, and so disposes of men's lives, liberties and properties."<sup>2</sup> He could perform certain judicial functions out of court, such as remitting fines and forfeitures, and granting pardons for all offenses, except wilful murder and treason.

The governor was the commander-in-chief of the militia of the colony, and appointed and removed all the officers except certain inferior officers, who were commissioned by the colonels.<sup>3</sup> In the case of the adjutant, who was employed to discipline the militia, the governor's action in appointing him and the payment of his salary were to be approved by the lords of the treasury.<sup>4</sup> The instructions to the governor explicitly stated that he had no power to declare war, except against the Indians, in cases of emergency, and then the home government was to be immediately notified.<sup>5</sup> The British troops sent to the colony were not only subject to the orders of the governor, but in some cases he also commissioned the officers. Blank commissions were sent to Gooch at the time of the expedition to Carthagen, and to Dinwiddie at the time of the French and Indian War, and these governors appointed regular British officers to a regiment composed of the regulars and the militia.<sup>6</sup>

<sup>1</sup> Hening, vol. ii, p. 532; vol. iii, pp. 287, 489.

<sup>2</sup> Hartwell, Blair, and Chilton, p. 20; Chitwood, p. 44.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 63; *Journal Council of Virginia*, MS., 1698-1703, p. 20; Beverley, p. 217.

<sup>4</sup> *Cal. St. P. Treas.*, 1708-1714, p. 417; *Journal Council of Va.*, MS., 1725-1734, p. 457.

<sup>5</sup> Instructions to the governors from Howard (1683), to Dunmore (1771).

<sup>6</sup> *Dinwiddie Papers*, vol. i, p. 355; vol. ii, p. 234.

The governor held a commission under the seal of the High Admiralty of Great Britain, and signed by the lords of the admiralty, as vice-admiral of Virginia.<sup>1</sup> His power over admiralty affairs extended at one time beyond Virginia. In 1697 it extended to Carolina and to the Bahama Islands, and later Pennsylvania and Jamaica were included.<sup>2</sup> He received from time to time from the lords of the admiralty specific instructions as to the disposition of certain admiralty matters.<sup>3</sup> It was the duty of the governor to render all possible assistance to the royal ships of war.<sup>4</sup> He had a certain degree of authority over these ships. He was instructed, for example, about 1710, to repel the enemy that had troubled Jamaica, should Virginia be attacked, and to use royal ships of war in doing this: "The commander of her majesty's ships on your coast have orders to follow your directions in the pursuit of this design, which her majesty recommends to your care and diligence." <sup>5</sup> In case of any misconduct on the part of the officers or sailors of these ships while ashore, he usually reported the matter to the lords of the admiralty.<sup>6</sup> The guard ships sent to the colony to cruise the coast of Virginia and Maryland, to protect trade from privateers, pirates, or any enemy, were under the governor's instructions. Berkeley stated in 1666

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 30, 121; 1721-1734, p. 35.

<sup>2</sup> *Ibid.*, 1698-1703, p. 30; *Spotswood Letters*, vol. ii, p. 169.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 89; 1705-1721, p. 326.

<sup>4</sup> *Ibid.*, 1698-1703, p. 154; An order from the lords of the treasury in 1698 directed the governors of Virginia and certain other colonies to give credit to Admiral Bembo, and his squadron in the West Indies, and to furnish him money. (*Plantations General*, vol. iv, (2), p. 146).

<sup>5</sup> C. O. 5, 210, p. 163.

<sup>6</sup> *Journal Board of Trade*, vol. vii, pp. 74, 80; *Va. Mag. Hist. and Biog.*, vol. iii, p. 235; *Sainsbury Papers*, 1640-1691, p. 451; a seaman of a British merchant ship was subject to trial, and in case of murder, to execution, in Virginia. (*Acts Privy Council, Col.*, vol. ii, no. 482.)



that a guard-ship would be of much greater service than forts. From 1670 to 1700 ten guard-ships were sent to the colony, but there were not more than three in the colony at any one time. Such ships were also sent to the colony in the eighteenth century. The expense of maintaining these ships fell upon the colony. The captains of the guard-ships were instructed to obey the orders of the governor, and in case they should need men, not to impress them but to apply to him.<sup>1</sup> According to a contemporary authority (1724), the guard-ships were "not at all under the direction of the governor upon emergencies," and it was observed by him that if the governor had authority over them, it might prove of advantage in regard to the general security, and especially to trade.<sup>2</sup> The captains of these ships did not always comply with their instructions in regard to obeying the orders of the governor. This necessitated a complaint, and perhaps influenced the writer to make the above statement. Generally, however, the governor exercised full authority over them.<sup>3</sup>

The governor had authority over any ship of war equipped and sent out by the colony, and issued the commission and instructions to the captain.<sup>4</sup> His authority extended of course over sloops hired for the use of the government. He also exercised a certain degree of power over British merchant ships, and exclusive power over Virginia coastwise vessels which confined themselves to the waters of this and the adjacent colonies. The granting of letters of

<sup>1</sup> *Acts Privy Council, Col.*, no. 423, p. 130; *Journal Board of Trade*, vol. iv, p. 227; vol. vi, p. 96; vol. xxii, pp. 3, 56.

<sup>2</sup> Jones, p. 78.

<sup>3</sup> Since the captain of a guardship at the time of Culpeper's administration was in collusion with pirates, and others later were accused of bribery and fraud, it was quite natural that the governor should be empowered to exercise jurisdiction over them.

<sup>4</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 44-46; 1705-1721, p. 347.

marque and reprisal by the court of vice-admiralty was upon special order of the governor, who was, however, to exercise this power very carefully, and only upon special authority from the home government.<sup>1</sup> The governor was to see that all breaches of the acts of trade, controversies regarding admiralty dues, and mariners' wages, and all maritime affairs were brought before this court.<sup>2</sup>

The British government emphasized very strongly the power of the governor over the finances of the colony. He was constantly advised as to the careful supervision which he was expected to exercise over the royal revenues. The financial returns from the colonies, and especially from Virginia, were a matter of great concern to the home government, and the governor was therefore repeatedly charged with the important service which he was to perform in this regard. All the royal revenue officials were under his supervision and made their reports to the home government through him. The problem as to how to prevent frauds in the revenue was quite difficult of solution, and it was not infrequently referred to in the instructions and in the correspondence with the governor. Much stress was, of course, laid upon trade, and he was specifically directed as to the valuable service which he could and must render by promoting in every way possible the interest of the English merchants. The financial powers of the governor, as has been indicated, included the general inspection of all salaries, even those of the members of the House of Burgesses. But his power to issue warrants for the use of public money did not, of course, extend to the funds raised and disposed of by the Assembly.

<sup>1</sup> Instructions to the governors from Nicholson (1702) to Dunmore (1771); *Executive Papers*, 1744-1756.

<sup>2</sup> Hening, vol. i, p. 537; *Va. Mag. Hist. and Biog.*, vol. iii, p. 116; *Dinwiddie Papers*, vol. i, p. 384.

The diplomatic and intercolonial powers of the governor were exercised more frequently after about 1700. There were from time to time many matters regarding trade with England, with other colonies, and with the Indians, military affairs, and the support of some project of the British government concerning the colonies, which claimed the attention of the governor. An interesting case in which he exercised his intercolonial power, by special royal order, was furnished in 1733, when Major Patrick Gordon was appointed lieutenant-governor of Pennsylvania at the request of the descendants of William Penn. The Earl of Orkney, the governor-in-chief of Virginia, was directed to see that his lieutenant-governor in Virginia should require Gordon to take the usual oaths before him, and also to furnish £2000 security for the due execution of the office.<sup>1</sup> In 1740 Governor Gooch, and in 1757 Governor Dinwiddie left the colony in the interest of the military policy of the British government.

It was but natural that the highest representative of royal authority in the colony should occupy a position of much dignity. As early as 1623 a body-guard was furnished the governor. This recognition of the kingly function which the governor performed was permanent during the seventeenth century, and the number of men in the guard varied from ten to thirty. The two reasons assigned for such a provision were, the danger from the Indians who visited him on pretense of making treaties, and also from those men in the colony who sympathized with the Parliamentarians in England, and thus were opposed to the royal colonial officers.<sup>2</sup> Several instances occurred of severe punishment of those speaking in a derogatory manner of

<sup>1</sup> *C. O.* 5, 195, p. 915.

<sup>2</sup> Hening, vol. i, p. 355; Bruce, *Instit. Hist. of Va.*, vol. ii, p. 352.

the governor. So sacred was the dignity of the mere office considered that not even Berkeley, after his recall from the colony, was to be slandered. One who did attack him was required to answer before the General Court. Even the burgesses prosecuted their own members guilty of this offense.<sup>1</sup> This, however, was confined to the seventeenth century.

Theoretically, the governorship was of a vice-regal character, and he who filled the office was the representative of the crown. The governor, like the king, had the power of appointing the officials of the colony. He possessed the royal authority as commander-in-chief of the militia and as vice-admiral, and could declare war and make peace. The king with the two houses of Parliament enacted the laws, so the governor, with the Council and burgesses, passed the laws of the colony. The royal prerogative was conferred upon the governor to call, prorogue and dissolve the legislature and to prevent by his veto any unfavorable legislation. He had the power to pardon all offenses, except treason and felony, and in ecclesiastical matters had certain rights of appointment to benefices. In addition to these and other functions which he was to perform he, as the representative of the lord chancellor, was keeper of the seal, and passed under the seal of the colony all grants, both of land and of offices, and as lord treasurer issued warrants for the disbursing of public funds. The governor received his appointment and specific instructions from the king, and was therefore legally and directly responsible to him. On the other hand, he had to administer the affairs of the colony, and was therefore indirectly responsible to the colonists. Since the colonists had to bear the expenses of the administration, and some of them were called upon by the gov-

<sup>1</sup> Bruce, *Instit. Hist. of Va.*, vol. ii, p. 354.

ernor to co-operate with him in the government of the colony, it was quite reasonable that they should exercise much influence upon him. Should he, however, seek to conciliate them, he might incur the displeasure of the home government, and should he endeavor to enforce strictly the royal instructions he might encounter very pronounced and strenuous opposition on the part of the colonists. The delicate position which he occupied required a recognition of the fact that conditions in the colony should be considered in the application of the instructions. The colonists did not intend to ignore the royal will as expressed in the instructions, still they felt that the application of them should be, to some extent at least, determined by circumstances. The administrations of the several governors from 1624 to the Revolution will be briefly considered in order to ascertain the efficiency of each as the representative of the crown and as the chief executive of the people of the colony.

Sir Francis Wyatt, who had served from 1621 as governor under the London Company, was commissioned on August 26, 1624, by James I to serve the colony as a royal governor. The first legislative assembly called in the colony met in 1619. It was provided that the assembly should be called annually by the governor, who was to have a veto on legislation. When the colony became royal (1624) the Assembly for a few years evidently did not exercise its functions, although recognition of the legislature was implied in Wyatt's commission. Trial by jury was for the first time guaranteed to the colonists during his administration. Notwithstanding the temporary check placed upon the Assembly under Wyatt, there was, so far as can be ascertained, no expression of dissatisfaction with the administration under him as the royal representative.<sup>1</sup> He served from

<sup>1</sup> A. Brown, *The First Republic in America*, pp. 607, 611, 647.



August, 1624, to April, 1626, and again from November, 1639, to February, 1641-2. His administrations are considered by writers on the period as "judicious, wise and pacific."<sup>1</sup>

Sir George Yeardley succeeded to the governorship April, 1626, after Wyatt's first term. He had previously served as governor under the London Company (1619-1621). His appointment was received with hearty approval by the colonists, as it was at the beginning of his first administration that the Assembly was established. His second administration was very brief, as he died November 14, 1627. His death was sincerely lamented by the colonists, who considered the loss of such a governor a public calamity, and so expressed themselves to the Privy Council. He was a governor who had the happy faculty of combining executive power and forceful administration with mildness and generosity. "During his administration," according to Brock, "many important improvements were made, and the power, population and prosperity of the colony much enhanced."<sup>2</sup>

Between the death of Yeardley and the arrival of Sir John Harvey (March, 1629-30), Captain Francis West and Doctor John Pott, presidents of the Council, served successively as governor. Harvey was, from the beginning of his administration, very unpopular, because of his dictatorial policy. He not only interfered with the Assembly but exacted fees, misappropriated public funds and issued grants for land already in possession of certain colonists.<sup>3</sup> Such an exhibition of arbitrary power was enough to antagonize the Council, the burgesses and the colonists in general. By 1634 colonists settled in Maryland, which territory was

<sup>1</sup> R. A. Brock, *Virginia and Virginians*, p. 19; Winsor, vol. iii, pt. i, p. 146.

<sup>2</sup> *Virginia and Virginians*, p. 17.

<sup>3</sup> Beverley, p. 47.

originally a part of Virginia, but had been granted to Lord Baltimore. Under authority from the governor of Virginia, and also from the king, William Claybourne, secretary of Virginia, had established trading posts on Kent Island in Maryland. He disputed the jurisdiction of the governor of Maryland and offered armed resistance, but was forced from the island. To escape punishment for murder and sedition with which he was charged, he fled to Virginia. When the Maryland authorities demanded his return, Harvey refused to surrender him. Claybourne then went to England to lay the matter before the king, and received the royal approval of his action. The colonists were greatly incensed at the policy of Harvey in this matter, for they maintained that he was secretly favorable to Maryland. The Assembly was called "on the petition of many inhabitants" to meet in special session to hear complaints against him. Before it met he decided to go to England to answer the charges, so on April 28, 1635, he was "thrust out of his government" by the Council, and Captain John West, president of the Council, assumed the executive authority "till the king's pleasure was known."<sup>1</sup> Charles I reappointed him, without giving the commissioners sent by the Council an opportunity to present the complaints of the colonists. This king, who believed in the theory of the divine right of kings, was no doubt anticipating trouble with Parliament and did not wish to hasten it by showing a submissive spirit in subjecting to trial a governor, the representative of royal authority, on charges preferred by the Council of a colony. Harvey returned to Virginia and served from April, 1636, to November, 1639. During these years the Assembly was not called.<sup>2</sup> The colonists were compelled to submit, but

<sup>1</sup> Hening, vol. i, p. 223.

<sup>2</sup> *Ibid.*, p. 224.

they did not support him, so he was removed. The loyalty of the colonists is more noteworthy when contrasted with the policy of such a royal governor, whose oppression was for a time approved by the king.

Sir Francis Wyatt, who had filled the governorship from 1624 to 1626, was appointed to succeed Harvey, and served until February, 1641-2. His second administration has already been considered, but it might be stated here that his beneficent term of office, though brief, was a decided relief to the colonists, who had suffered at the hands of his predecessor.

When Sir William Berkeley became governor (February, 1641-2) the colonists were loyal to the crown. The Assembly, which he called upon his arrival, passed a protest against the petition presented by Sir George Sandys to Parliament for the restoration of the London Company. It was specified that the colonists were satisfied with the royal administration of the colony. It seems that Berkeley so administered the affairs of the colony from 1642 to 1652 as to give general satisfaction. The loyalty of the colonists to him as the representative of the crown was shown by their supporting him when he invited, in 1649, Charles II, the fugitive king, to come to Virginia. The proof of their sincerity was given when they offered armed resistance to the commissioners sent by Cromwell to compel the surrender of the colony. The defiant attitude of the colonists under the leadership of Berkeley so impressed the commissioners that the surrender was effected on favorable terms. In the articles of agreement it was specified that the freedom of the colony was not to be interrupted, that free trade with all countries was to be granted, and taxation by the Assembly only was to be guaranteed. Berkeley was, however, superseded by Richard Bennett, one of the commissioners.

During the Protectorate (1652-1660) the governorship

was elective and was filled by vote of the House of Burgesses, the colony enjoyed free trade, custom duties were abolished, taxes were imposed by the burgesses only, and there was no interference from England. Thus the colony was an independent democracy.

With the Restoration (1660), Berkeley was elected governor by the Assembly with the understanding that he would call an Assembly at least once in two years, and would not dissolve that body without its consent.<sup>1</sup> This seems to indicate that his services during the ten years of his first administration had been satisfactory. With the Restoration there was a gradual reaction by which the colonists were deprived of their cherished privileges. The trade of the colony was restricted to England, for the benefit of English shipping, thus increasing the royal revenues and contributing to the wealth of the British merchants. The power of the Assembly was reduced as the offices of governor and councillor were again made royal appointments. A special effort was made to suppress the dissenters and thus make the Church of England supreme in the colony. The right of suffrage which had been enjoyed was restricted. The sending of many of Cromwell's followers to the colony was seriously objected to by the colonists on the ground that they were disposed towards insurrection. These "jail birds" were sent to assist in the cultivation of tobacco. This increased the quantity of tobacco, with the result that the price was lowered, which was the source of much dissatisfaction. There was discontent in regard to taxation, which was on persons but not on property. The poor were thus taxed but excluded from the franchise by an act of 1670, and also from the Assembly, to which only property-owners could be elected. The colonists in general were

<sup>1</sup> Hening, vol. i, p. 530.

agitated over the grant of all Virginia to Culpeper and Arlington for thirty-one years, and sent three special agents to request the king to revoke this grant. The annual tax of fifty pounds of tobacco on every tithable, to cover the expenses of these agents, was paid with reluctance. The dictatorial Berkeley supported by an equally arbitrary monarch had brought about a condition of affairs which contrasted with the quietude and prosperity of the colony during the Protectorate. It was therefore not strange that when Berkeley refused to carry out the will of the people in regard to protecting the colony against the Indians, a revolution should have resulted. It is maintained that the governor, knowing the general discontent, was not willing to encourage the five hundred men in arms, thinking that after defeating the Indians they might demand, before returning to their homes, that the many grievances of the colonists should be redressed. The leader of the revolution, Nathaniel Bacon, succeeded in enlisting a force strong enough to drive Berkeley not only from the seat of government but also across the Chesapeake Bay. The acts of Assembly, under the direction of Bacon, indicate the constructive work which he was planning in order to relieve the colonists of the sources of their discontent. The death of Bacon had a disastrous effect on the reforms which he had inaugurated. With the return of Berkeley to power, an era of unprecedented tyranny for the colony was begun. The followers of Bacon were shown no mercy, as twenty-three were hanged and the estates of others confiscated. So cruel was the policy of the governor that even Charles II sent commissioners with British troops to prevent him from any further exhibition of his vengeance, and to make an investigation of conditions in the colony. Berkeley was ordered to England to explain his conduct, and Colonel Herbert Jeffreys was appointed to serve as lieutenant-governor. That the colonists



were loyal to the crown and to the royal governors after Berkeley's administration is quite remarkable.

Colonel Herbert Jeffreys entered upon his duties April 27, 1677. When he demanded the journal of the House of Burgesses, it was refused, although he maintained that it was his purpose thus to ascertain the grievances of the colonists. It was withheld on the ground that the journal was the property of the burgesses, the representatives of the people, and not of the British government, and that it was unwise to violate this well-established principle. The records of the House were seized by order of the governor, and the clerk of the House was fined and imprisoned. The Assembly published a declaration protesting against such oppression. Jeffreys died after serving about one year. His administration was, notwithstanding the incident mentioned, characterized by a somewhat negative policy. He is, however, due some credit for checking the royalist reaction, so pronounced when he assumed the governorship, and also for making treaties with the Indians which proved advantageous.

Sir Henry Chicheley served as lieutenant-governor from December, 1678, until May, 1680. His administration seems to have been comparatively satisfactory, as there were no very serious complaints of him.

Thomas, Lord Culpeper, was commissioned governor for life on July 8, 1675, to take office, however, only on the death or removal of Berkeley. Berkeley died in 1677, but Culpeper did not come to Virginia until May, 1680, for Jeffreys and Chicheley served respectively as his deputies. He evidently did not intend personally to administer the affairs of the colony, as he did not assume the duties of the office until compelled to do so by the king. He soon won the confidence of the colonists by the measures which he proposed to the Assembly, and especially the act for pardoning

all of the participants in Bacon's Rebellion who were then living. The conciliatory spirit which he manifested so impressed the Assembly that that body was influenced to pass an act which they would not have passed had coercion been resorted to. This act specified that the duty of two shillings a hogshead on exported tobacco should be made perpetual and subject to the king's disposal instead of as formerly accountable to the Assembly. Culpeper was, moreover, granted £500 sterling by the Assembly as a special recognition of his services. There seems to have been no objection on the part of the colonists to his being granted by the king an increase of £1000 in his salary in addition to the already established income of £1000 salary, about £800 or £1000 in perquisites, and £150 for house rent. This is a striking example of the loyalty of the colony following so soon after the financial and economic, as well as the political, disturbance occasioned by Berkeley's oppression. After remaining in the colony about four months, Culpeper returned to England, leaving Chicheley to serve as his deputy. The colonists soon complained that the troops sent to suppress Bacon's Rebellion were very objectionable, and they were withdrawn. There was general discontent on account of the low price of tobacco. The over-production of tobacco was due to some extent to the prisoners sent to the colony, and also to the commercial regulations of the home government under the influence of the British merchants. Another source of complaint was that the planters were forced to take all tobacco for shipment to the places established on the bay and rivers. An Assembly was finally called to consider the low price of tobacco and also the matter in regard to towns, but with ineffectual result. The planters in several counties then deliberately destroyed their tobacco plants. Chicheley, desiring to check any further destruction of tobacco, captured some of those guilty of the offence and

imprisoned them. Culpeper was ordered by the king to return to the colony to check this tendency towards revolution. On his return, which was reluctant, as he preferred staying in England, his attitude towards the colonists was changed. In his speech to the Assembly he condemned the colonists as unworthy of any favors. He raised by proclamation the price of tobacco, with the proviso that his own salary and the royal revenues should not thereby be affected. This was considered by the colonists equivalent to a special tax imposed without their consent, but having no recourse, they submitted. He followed this dictatorial act by dissolving the Assembly. His policy in dealing with the plant-cutters was rather severe and several of their leaders were hanged. He proceeded to punish Major Robert Beverley, clerk of the House of Burgesses, for refusing to surrender the journal of its proceedings, by subjecting him to a rigorous imprisonment, and then disfranchised him. He then, after having remained in the colony about ten months, went to England in September, 1683, leaving Nicholas Spencer, the president of the Council, in charge of the government. For leaving the colony again without permission, and also for having accepted the gift presented by the Assembly, he was removed.

Francis, Lord Howard of Effingham, began his administration as governor in April, 1684. An indication of the policy of the British government in regard to Virginia at this time is furnished in the instructions to the governor to prevent the use of the printing-press in the colony. Howard might have won the confidence of the colonists by manifesting a conciliatory spirit, but instead he antagonized them by continuing the work of Culpeper regarding the plant-cutters. Some of those who had been pardoned were re-arrested and hanged, and their estates confiscated and, in fact, taken over by the governor. He further angered

the colonists by ignoring the Assembly. He increased the usual fees of his office, and the acts passed by the Assembly to prevent these unjust exactions were vetoed. The colonists strongly resented the dictatorial policy of Howard, and the House of Burgesses sent Philip Ludwell to England to petition for relief. In 1689 the Privy Council ordered that the fee of two hundred pounds of tobacco charged for affixing the seal should be discontinued. He issued, as he claimed, on royal authority, proclamations repealing several acts of the Assembly, and the protest of the Assembly was raised in vain. He was sustained by James II, to whom the matter was referred, and was instructed to dissolve the Assembly for such democratic proceedings, and to prosecute Major Robert Beverley, clerk of the House, and to appoint his successor rather than to permit the House to elect him. Howard explained to the king that the burgesses had been spending their time in frivolous debates and in contesting the power of the governor to veto acts of Assembly. Beverley was imprisoned, disqualified from holding any public office, and the journal and other papers of the House in his possession were seized. The colonists continued their complaints until the home government instructed Howard to return to England. He sailed October, 1688, leaving Nathaniel Bacon, the president of the Council, in charge of the government. By October, 1690, Colonel Francis Nicholson was appointed as lieutenant-governor. Howard still held his commission as governor, which enabled him to remain in England and to draw half of the salary of his office for the next two years. Commenting on the administration of Howard, Brock states: "Effingham, no less avaricious and unscrupulous than his predecessor Culpeper had been, by his tyranny and rapacity aroused a general spirit of indignation."<sup>1</sup>

<sup>1</sup> *Virginia and Virginians*, p. 27.

Colonel Francis Nicholson served the colony from October, 1690, to October, 1692. He entered upon the duties of the office with the colonists strongly antagonistic towards him. Howard, whose administration in the colony was notorious for corruption and tyranny, being reluctant to return from England, had delegated Nicholson to serve as lieutenant-governor in Virginia. The reception which he received was not encouraging, as he found the colony almost ready for revolution. It was but natural that the people should suspect that he would continue the dictatorial policy of his predecessor. He had promised Howard that he would endeavor to postpone the calling of an Assembly as long as possible, in order that the complaints against his arbitrary administration, preferred by the agent of the colony before the Privy Council, might not be renewed. While he succeeded for a time in this plan, he endeavored, however, by the encouragement of athletic games, for excellence in which he offered prizes, and by permitting the colonists many indulgences, to win popularity. His strong endorsement of the project to erect a college appealed, no doubt, to the more cultured and aristocratic colonists. The Assembly, in 1691, presented him with £300 as an expression of their gratitude, and in their address to the king requesting that the governor be permitted to receive it they stated it was "an expression of our gratitude, not as a reward suitable to his merit." The home government approved of it, and the following year another gift of £200 was also bestowed by the Assembly.<sup>1</sup> In 1692 he became governor of Maryland, and was succeeded by Sir Edmund Andros.

Sir Edmund Andros reached Virginia in October, 1692, and although his administration as governor of New England had been characterized by an oppressive policy, still he

<sup>1</sup> *Journal House of Burgesses, 1659/60-1693*, pp. 372, 384, 404, 407.



was kindly received by the colonists. He encouraged the cultivation of cotton and gave his support to an effort at manufacturing by assenting to the act establishing fulling mills. His administration seemed to give evidence of general satisfaction, but owing to his determination to exercise his power over church affairs, his dictatorial policy regarding the Assembly and the emphasis of the royal prerogative, the opposition to him was sufficient to cause his removal.

In December, 1698, Nicholson again assumed the duties of the governorship, and this time with the full powers of governor. He immediately communicated with the other governors in the American colonies regarding intercolonial co-operation. This scheme, of course, failed, and its result tended to make him more overbearing in his relations with the colonists. His attitude was just the opposite to what it was during his first administration, and he sought to misrepresent conditions in the colony. Disappointment in a love affair with a young lady of a very influential family led him to say and to do many rather extraordinary things, which occasioned the questioning of his sanity. Commissary Blair was among those who were the special marks of his vengeance. Under such circumstances it was not strange that a controversy with the clergy assumed so serious a character that his recall was deemed advisable. Though he was a man of arbitrary principles, still his term of service was not characterized by any of those examples of maladministration which are associated with the names of Berkeley, Culpeper and Howard. This was, no doubt, due to the influential members of the Council and to the burgesses, who dared to oppose his recommendations and to refuse to make appropriations for the execution of some of his plans. His action in pledging, in 1701, £900 to New York for frontier defense, after the Assembly had refused to make an appropriation, was questioned. Beverley, writing in 1720, stated

positively that Nicholson boasted very much of his loyalty to the crown and public spirit, which prompted him to advance that amount, which was later to be refunded out of the quit rents.<sup>1</sup> He maintained that the money was not actually advanced by him. It does seem that Nicholson did pledge the amount in question, even if he were not called upon to pay it. While Nicholson was *persona non grata*, still, according to Colonel Robert Quary, surveyor-general of the customs, writing (October 15, 1703) to the Board of Trade, as he said, "without the least partiality or favor of either governor or any other person or party whatever," gives a very favorable account of the colony. "This government," said he,

was never under better or happier circumstances since it was a province than now. Her majesty's revenue never managed with more justice, care and judgment than at this present, nor ever augmented and improved to that height as now it is, and yet the public taxes were never easier or lighter than now, and consequently the inhabitants never better pleased or satisfied.

After giving certain details, he stated further :

I could say a great deal more but cannot better demonstrate the great quiet, tranquility and satisfaction of all this government than by referring your lordships to the several addresses from all the parts of it, the Assembly, the grand jury of the province, the militia and the whole clergy. And yet after all this, which is a matter of fact, I am obliged to acquaint your lordships that there are some uneasy, factious and turbulent spirits (though few in number), that do envy this happiness and endeavor to distract and disturb the peace and quiet of this government.

He stated that the men opposing Nicholson were the same

<sup>1</sup> *Hist. of Va.*, p. 87.

who had given Howard and Andros trouble. "They expected that the governor would be governed by them, that all places of honors and profits should be in their hands and disposing, and that now they should be able to crush and ruin the other party, but they quickly found themselves mistaken." He commended Nicholson for his justice and impartiality, and said that he was of the opinion that the councillors and others had provoked him to say and to do the things which rendered him objectionable. He stated that he endeavored to ascertain from the leaders of the faction opposing Nicholson the reasons for their opposition, and the principal ones given were that the governor had exhibited a passionate temper, used questionable language and sought to intimidate by threatening. Other reasons given were that he had insisted on too frequent musters of the militia and that his disappointment in a courtship with a young lady of an influential family in the colony had so affected him in his attitude towards the administration of the government that he no longer had the support of the colonists. He stated that the Council, the House of Burgesses and others opposed Nicholson, and advised the Board of Trade to take steps to protect him against them, and warned the Board against the leader of this party of opposition, who had just gone to England to prefer charges against him. The Board of Trade evidently recognized the strong opposition to him as indicative of the futility of his attempting further to serve the colony.<sup>1</sup> A man of his character, though zealous, energetic and to some extent public-spirited, was utterly disqualified for the task of administering the government of the colony, and it is not surprising that he should have adopted the secret method of maligning the colonists in his correspondence with the home government.

<sup>1</sup> *C. O.* 324, 8, pp. 311-321.

On August 15, 1705, Edward Nott was appointed lieutenant-governor under the Earl of Orkney as the governor-in-chief. Notwithstanding the fact that Nicholson had irritated the colonists and to some extent prejudiced them against the home government, still they welcomed his successor and entertained the hope that he would profit by the mistakes of his predecessor. The attitude of the colonists is all the more noteworthy when we consider that this was practically the first case of the appointing of a lieutenant-governor under a governor-in-chief resident in England. There seems to have been no objection raised at this time to the system by which a favorite of the king held the office of governor while his deputy actually performed the duties of it. Within a very short time after his arrival, Nott called the Assembly. The laws of the colony were revised by the committee previously appointed for that purpose. The attitude of the Assembly towards Nott and also, through him, towards the British government is to be seen in the willingness of that body to appropriate £3000 for the erection of a house for the governor.<sup>1</sup> This project had been insisted upon by the home government from the period of Berkeley's first administration. It was mentioned in the instructions to Nicholson, but of course it was not favorably acted upon at that time. While the Assembly manifested a friendly spirit towards Nott, it is not therefore to be inferred that he yielded much of his power, for an act which infringed upon the governor's right of appointing justices of the peace, and also another, "An act for the better securing the liberty of the subject" were vetoed by him.<sup>2</sup> In a message to the House of Burgesses, April 26, 1706, Nott indicated that there were, as might be expected,

<sup>1</sup> *Journal House of Burgesses, 1705-1706*, pp. 181, 188.

<sup>2</sup> *Ibid.*, pref., pp. 28-30; *Va. Mag. Hist. and Biog.*, vol. xxi, p. 174.

some who were not loyally supporting his administration. "I am sorry," said he, "I have occasion to take notice to you of my endeavor for reconciling differences, and promoting peace and amity in your country have not had so good an effect as I heartily wished."<sup>1</sup> That the administration of such a governor as his predecessor should have created factions which could not be easily reconciled, was to be expected. Nott did not live to see the results of an administration the beginning of which promised so much of real benefit to the colony. He served only one year, but during that time, according to Beverley, he was able, after the trouble with Nicholson, to give "ease to the country, by a mild rule."<sup>2</sup> Another writer refers to him as "a mild, benevolent man."<sup>3</sup> In the epitaph upon the tomb to his memory still standing in the churchyard of Old Bruton Church, in Williamsburg, the regard in which he was held is thus testified:

In his private character he was a good Christian, and in his public, a good governor. He was a lover of mankind and bountiful to his friends. By the prudence and justice of his administration he was universally esteemed a public blessing while he lived, and when he died it was a public calamity. In grateful remembrance of whose many virtues the General Assembly of this colony have erected this monument.<sup>4</sup>

Edmund Jennings, the president of the Council, served as governor between the death of Nott on August 23, 1706, and the arrival of Spotswood, June 23, 1710. Colonel Robert Hunter had been appointed governor on August 14.

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. xxi, p. 177.

<sup>2</sup> *Hist. of Va.*, p. 88.

<sup>3</sup> C. Campbell, *History of the Colony and Ancient Dominion of Virginia*, p. 376.

<sup>4</sup> Brock, p. 32.



1707, but did not reach the colony, as he was captured on the way by the French.

Colonel Alexander Spotswood, who was descended from an ancient Scotch family, and had served with distinction under the Duke of Marlborough, was given a very cordial welcome when he entered upon his duties. In the instructions to Hunter (1707) there were eight rather long paragraphs granting to the colonists the right of *habeas corpus*, but as he did not reach Virginia it was not until three years later that they really enjoyed the privilege. When Spotswood arrived bringing this right, he was, for this reason, especially joyously received. The Assembly manifested its appreciation by a vote of thanks and also by an appropriation of about £2000 for completing the governor's house. For about a year the relations of the governor and the Assembly were very friendly, but when Spotswood called upon that body for an appropriation to defend the colony against an expected French invasion, he was refused. The Assembly was, perhaps, of the opinion that the treasury could not furnish sufficient funds to meet the demands of a governor whose military career had accustomed him to operations upon a plan far too extensive for the colony. The disappointment of Spotswood was expressed in his correspondence with the home government, and the reason for the action of the Assembly, as given by him, was that "they hoped by their frugality to recommend themselves to the populace." He thus admits that the project that he insisted upon was unpopular. For if the people had desired to make the preparation which he claimed was necessary in order to protect the colony, the members of the Assembly would not have presumed to act contrary to so important a popular demand. The Assembly did decide to grant him £20,000, but this was to be raised by duties laid largely on British manufactures. He refused to accept such a levy, and being

convinced that no other could be secured, dissolved the Assembly, and in order to make the desired military preparations was compelled to call upon the home government for supplies. Another typical example of the conflicts between Spotswood and the Assembly was the refusal, in 1715, to make appropriations for the assistance of South Carolina against an Indian invasion, unless the repeal of part of the tobacco act were assured. The governor dissolved the Assembly, and the resolutions of the Council, which body supported the executive at this time, and the speeches of the governor indicate the feeling existing against the burgesses.<sup>1</sup> Spotswood is generally regarded as being unsurpassed in real ability and character by any of the colonial governors, yet he was unable to influence the House of Burgesses, which sought to maintain its independence. His dictatorial attitude brought him into conflict with certain influential men, who composed the vestry of a parish. In 1720 the Assembly appropriated £60 to the church wardens of Bruton parish for defraying the charges of a law-suit between the vestry of that parish and the governor, concerning the advowson of the church of that parish.<sup>2</sup>

It was not long before he antagonized the Council, which was composed of members of the aristocratic families of the colony. The answer that he made to the charges preferred against him in England indicates that the Council evidently had resented his dictatorial manner. "Some men," said he, "are always dissatisfied, like the Tories, if they are not allowed to govern; men who look upon every one not born in the country as a foreigner." Finally eight members of the Council openly complained of him to the

<sup>1</sup> The colony was very prosperous at this time and could have borne the expense of the military appropriation requested. *Va Hist. Reg.*, vol. iv, p. 11.

<sup>2</sup> *Journal House of Burgesses, 1727-1734*, p. 21.

home government because he had appointed inferior men to serve with them in criminal trials. This faction was led by Commissary Blair. Thus it was difficult for him to perform the duties of his office with success, and in 1722 he was removed. The historians all agree as to the character and ability of Spotswood. Beverley and Jones, contemporaries, the former writing near the close, and the latter two years after his administration, both testify to the progress of the colony during his incumbency.<sup>1</sup> He exhibited his splendid public spirit in many ways. He was a patron of learning, and had much to do with rebuilding William and Mary College, and furthered with his own means a school for Indian children. The colony, and in fact America, was indebted to him for making the first beginnings in the manufacture of iron. His courageous military spirit asserted itself in the trip across the Blue Ridge Mountains, in his readiness to send aid to neighboring colonies in distress, and especially in the attention given to the militia. He, however, not only antagonized the legislature of the colony by his strenuous military enterprises, but, according to Burk, his removal was due to the boldness with which he urged the British government to establish a chain of forts on the frontier, by which he planned to conciliate the Indians, and to prepare a strong colonial force to be assisted by British troops in driving back the Spanish and the French. Since the home government did not look with favor upon this scheme, he demanded that those who accompanied him across the mountains should be compensated by that government, as the whole of America would share the benefits of the trip.<sup>2</sup> This bold, peremptory demand was very offensive, but it was evidently the opposition in the colony more

<sup>1</sup> *Hist. of Va.*, p. 89; *Present State of Virginia*, pp. 31, 32.

<sup>2</sup> *Hist. of Va.*, vol. iii, p. 96.

than this demand that caused his removal. Chalmers, an English historian, who has only words of praise for him, attributes his removal to the frequent conflicts with the Council and the House of Burgesses.<sup>1</sup>

On September 8, 1722, Hugh Drysdale succeeded to the governorship. Historians devote very little attention to his administration, since it was so quiet and peaceful that it did not afford much to relate. Chalmers, however, in his observations on Drysdale, is rather severe in his estimate of the character of the man. "He adopted," said he, "a mode of government suitable to the inferiority and the weakness of his character, without regarding his reason as a man or his instructions as an officer. He resigned his authority to the councillors, and resolved to pass every law that the burgesses should propose."<sup>2</sup> Campbell, also, is very unmistakable in his opinion of him. This author states that Drysdale assumed the duties of his office "amid the prosperity bequeathed by his predecessor, and being a man of mediocre caliber, yielded to the current of the day, solicitous only to retain his place."<sup>3</sup> It is true that no events of any importance occurred during the four years of his administration, but he was hardly quite so much of a "figurehead" as these writers would make him appear. There was no conflict with the Assembly, but this is no proof that he had agreed to give to that body a large part of the executive power. Since there were no events which indicate dissatisfaction of the colonists nor any signs of trouble with the Assembly, we are influenced to take at their face value the speeches of the governor to the Assembly and the addresses of the Council and the burgesses to

<sup>1</sup> *Introduction to the History of the Revolt of the American Colonies*, vol. ii, p. 78.

<sup>2</sup> *Ibid.*, p. 79.

<sup>3</sup> *Hist. of Va.*, p. 411.

him. In his first speech in 1723 he referred to the recent slave insurrection, and advised that more stringent laws should be passed for punishing slaves who attempted to revolt. To insure the proper protection, he proposed the strengthening of the militia. Another matter of much interest was the "languishing condition of the tobacco trade," due to "gross frauds and abuses," the remedy for which he left to the Assembly. His action in these cases was not very different from what would be expected of other governors. The address of the burgesses in reply to this speech indicates the cordial relation existing between them and the royal governor: "We are highly sensible of the blessings we enjoy under the present establishment of the crown of Great Britain. As our ancestors have ever acted with firm and steady loyalty to their sovereign, so we shall strictly persevere therein."

In his speech to the Assembly in 1726 he gives his reason for proroguing the Assembly between 1723 and 1726, which action was not objected to by anyone.

Partly to save expense [said he] and partly because I heard of no grievances waiting to be redressed, all persons and things being in a perfect calm and tranquility. Indeed it is not so much any necessity of state that has now occasioned your meeting as that you might have an opportunity to defray the usual debts and contingencies, which howsoever inconsiderable they are, it seems cannot be discharged by your constitution without an Assembly.

In this same speech his desire to meet the needs of the colony was shown in regard to certain revenue matters. The duty on liquors and slaves, which for some time had resulted very effectively in lessening the levy by poll, a system of taxation, which was always objectionable, was disallowed by the home government. "But the interfering



interest of the African Company," said he, "has deprived us of that advantage, and has obtained a repeal of that law." The Royal African Company was under the protection of the crown and the governor was instructed to render every assistance to it in importing slaves to the colony. Drysdale thus considered the action of that company an interference with the interests and progress of the colony. Regarding the duty on liquors, he said: "But a duty on liquors being expressly recommended in my instructions, if you think fit to enact it by itself, I am persuaded it will meet with approbation at home." The instances cited seem to indicate that he sought, so far as practicable, to execute his instructions, but that conditions in the colony rather determined his actions. Rev. James Blair, writing to the Bishop of London (July 23, 1723) referred to Spotswood as "a gentleman that had gone far into what they called the queen's measures and hated all that were of another kidney," and contrasted him with Drysdale, stating that Drysdale was "a person of a quite different temper, and one who by his mild and just administration gains mightily the love of this country, and is most particularly civil and friendly to me." The fact that Blair and Spotswood were not friendly did not, it seems, influence him to praise Drysdale unduly.<sup>1</sup> The appreciation of the colony for his services was expressed in the address of the Council and the House of Burgesses to the king when he returned to England in 1726 for his health: "He hath made it his business altogether, with a singular zeal for your majesty's person and family, to encourage peace and justice in this your majesty's government, without any sinister views of self-interest." The address concluded with an expression of thanks to the king for sending such a man, and of the hope that upon the recovery of his health he might be returned to the colony.

<sup>1</sup> *Fulham, MSS., Virginia*, 2nd box, no. 113.

We are thus led to believe that Drysdale was not a weak governor, lacking in force of character and administrative capacity. He was, of course, not as progressive an executive as his predecessor, and in fact attempted, so far as we know, no great special work for the colony. His was, however, an administration of peace, general prosperity, and quiet constructive work. Because he had no conflicts with the Assembly, but rather sought to ascertain and to meet the needs of the people as expressed in the Assembly, is no reason why he practically surrendered the administration to that body. It is simply another example of the quietude and progress of the colony, with little occasion for correspondence with the home government, which characterized the administrations of the few royal governors, who were not specially energetic in executing their instructions, and of those of the presidents of the Council, who occasionally served when the governorship was for any reason vacant. Between the departure of Drysdale (July 11, 1726) and the arrival of Gooch, Robert Carter, president of the Council, served as governor.

William Gooch, who, like Spotswood, was a native of Scotland and an officer in the British army, assumed his duties on September 8, 1727. An event occurred at the very beginning of his administration which for a time seemed to make his position rather insecure with the home government. The Council granted him £300 out of the quit rents (a revenue which was to be used only by royal order), and the burgesses presented him with £500 out of the provincial revenues. It was a well-established custom, as previously stated, that the governor should not accept any gift, and especially from the Assembly, without the approval of the home government. The Board of Trade and the Privy Council were strongly opposed to allowing him to retain these rather large presents, but finally consented.

The main reason for the objection of the British government to the governor's receiving gifts from the Assembly was that he would thereby become dependent upon that body. Why this very striking case should have been made an exception was perhaps due to the prosperity of the colony, and the desire of the home government to encourage this expression of the friendly spirit of the colonists towards a royal governor, who would no doubt see to it that the British government through the revenues, and the merchants through trade, would benefit by that prosperity, which might be somewhat retarded by a too rigid adherence to the policy in question. Campbell evidently places at this time a rather low estimate upon the character and ability of Gooch, when he says that when the Council appropriated him £300, "he in return resigned in a great measure the helm of government to them."<sup>1</sup> From later events it would seem that Gooch was a man of real capacity, and while he worked harmoniously with the Council, did not need to surrender any of his executive power. Although the governor was permitted to retain the gift of £500 bestowed by the burgesses, still there was no effort made by the burgesses to use this as a means of securing more power. After he had served nine years, the burgesses, in an address in reply to his speech of August 7, 1736, expressed the cordial relations existing between them: "Should we withhold our confidence from a person who for so many years has never once abused it?"<sup>2</sup> This friendly spirit continued during the remainder of his administration.

Troops were transported in 1740 from the colonies to co-operate with British troops in an offensive war against the Spanish colony at Carthagená. Gooch himself and four

<sup>1</sup> *Hist. of Va.*, p. 414.

<sup>2</sup> *Journal House of Burgesses, 1736-1740*, p. 247.

hundred men went from Virginia to join the regulars at Jamaica, and proceeded thence to attack Carthagena, in which campaign he was seriously, though not fatally, wounded. The loyalty of the Assembly, both to the home government and to the governor, was shown by appropriating £5000 for this expedition. The action of the Assembly is all the more noteworthy, as the above amount exceeded the funds in the treasury, and a large part of it was loaned by colonists.<sup>1</sup> Immediately after this expedition, upon the request from Georgia for help against the Spaniards, some troops were sent. Although there were apprehensions of foreign invasion, of an Indian attack, and also of slave insurrections within the colony, still the assistance was sent to Georgia. Notwithstanding the fear of slave insurrections, more slaves were imported, and the act of Assembly to check this by laying a duty on imported slaves was disallowed by the Board of Trade in order to favor the Royal African Company. The willingness of the Assembly to continue to render assistance to the British government in a policy which promised no direct benefit to Virginia, was seen in the £4000 appropriated in 1746 for raising the quota of troops assigned that colony, for the intended invasion of Canada, and £600 for provisions and quarters for British soldiers bound for Canada, but compelled to stop in Virginia on account of storms. It was an event of some importance when, in 1744, Gooch formed a treaty with the Six Nations, assuring to Virginia the territory to the Ohio. When the dissenters from the Church of England began to increase about 1740, Gooch took a decided position against them and prohibited their meetings under heavy penalties. The commissary referred to him as a "sincere friend to our church, clergy and seat of education."<sup>2</sup> Thus it would

<sup>1</sup> Hening, vol. v, p. 121; *C. O.* 5, 41, pp. 106, 112.

<sup>2</sup> Fulham, *MSS., Virginia*, 1st box, no. 46.

seem that the executive was not called upon to surrender any of his power, because of the gifts bestowed at the beginning of his administration, and that the friendly relations existing between him and the Assembly were conducive to the interests of the home government.

The fact that he was knighted in 1746, three years before he resigned, indicates that his services as governor were appreciated by the home government. After twenty-two years in office, he resigned, much to the regret of the people of the colony, who had had no occasion to make any complaint of him. After his return to England he continued to be the friend of the colony. During his administration there were no oppressive taxes, trade was increased, and the colony was more prosperous than ever before in its history. His ability and skill as a diplomat was seen in his keeping the colonists, the Board of Trade and the merchants all on good terms. Campbell's later estimate of him is as follows: "Notwithstanding some flexibility of principle, he appears to have been estimable in public and private character. His capacity and intelligence were of a high order, and were adorned by uniform courtesy and dignity, and singular amenity of manners."<sup>1</sup> He was a striking example of what an energetic, forceful royal governor, who was influenced by conditions in the colony and not altogether by his instructions, could accomplish both for the colony and for the British government. In the interim between the departure of Gooch (June 20, 1749) and the arrival of Dinwiddie, three councillors, John Robinson, Thomas Lee and Lewis Burwell, as presidents of the Council, were successively the acting governor.

Robert Dinwiddie was appointed November 20, 1751, and reached the colony early in 1752. Some years before,

<sup>1</sup> *Hist. of Va.*, p. 448.



however, he was associated with the colony while performing the duties of surveyor-general of the customs for the southern district of America. By virtue of this office he was, according to royal instructions, to be admitted as a member of the Council of Virginia. When he attempted, in 1741, to demand this privilege, the Council refused to allow him to act with it in a legislative or judicial capacity, and it was only upon an order of the Privy Council that he was admitted.<sup>1</sup> The action of Dinwiddie in this connection was not forgotten by the Council, and thus to some extent at least he antagonized those from whom he needed support when he became governor. Campbell thinks that there was a natural prejudice felt by the aristocracy of Virginia against him as an untitled Scotchman.<sup>2</sup> This statement is not, however, consistent with the facts, for Spotswood and Gooch were both Scotchmen, with no titles except those won by service in the British army, still they were, as has been shown, not in the least objectionable to the aristocracy of the colony because of this. Nott and Drysdale were Englishmen without even military rank, yet the aristocracy of the colony received them cordially and rendered them every assistance in so administering the affairs of the colony as to conduce to its peace and prosperity. It is true that about the time of Dinwiddie's administration there was, to some extent, anxiety and perplexity in public affairs, but had Gooch continued as governor, or another equally as politic and tactful been appointed, no serious trouble would have resulted. In addition to the antagonism already mentioned, Dinwiddie increased his unpopularity by declaring upon his arrival the king's disap-

<sup>1</sup> The statement of Miller (*Legislature of the Province of Virginia*, p. 136, n.) that this took place in 1742, while Dinwiddie was governor, is incorrect.

<sup>2</sup> *Hist. of Va.*, p. 455.

proval of certain acts of assembly passed during Gooch's administration and approved by that governor. Of course, Dinwiddie had nothing to do with the action of the home government on the acts in question, and it was unfortunate for him that it became necessary to begin his career as governor by making such an announcement to the colony. The Assembly protested against this exercise of the royal prerogative, but the remonstrance was ineffective.

Notwithstanding the unfriendly spirit of the people as represented in the House, Dinwiddie dared to continue to provoke them by an act which indicated the selfish motive which influenced him to seek the governorship. Finding upon his arrival, as he claimed, about a million acres of unpatented land held by the colonists,<sup>1</sup> he established a fee of a pistole (\$3.60) for every grant, to which he should affix the seal of the colony. It seems that the Board of Trade, and for some reason the Council of Virginia, approved of this plan, but the burgesses declared that the fee was unjust, and that whoever paid it would be considered a betrayer of the rights of the people.<sup>2</sup> Notwithstanding the opposition of the Council to him previous to his appointment as governor, he succeeded in some way in securing the co-operation of the councillors in this matter. The strenuous opposition of the burgesses might have been expected, since no such fee had ever been charged by the governor, except in the case of Howard, who made a similar attempt, but upon the appeal of the burgesses to the king was ordered to discontinue it. Dinwiddie claimed in his

<sup>1</sup> John Blair who supported Dinwiddie stated in a letter (January 25, 1754) to the Bishop of London that "the most noted stickler against the fee has unsigned patents for about 60,000 acres; so as he was to save £60 a year by the delay, it is no wonder that he opposed the fee." (*Fulham MSS., Virginia*, 2nd box, no. 238). These statements as to the large number of unpatented acres have not been verified.

<sup>2</sup> *Journal House of Burgesses, 1752-1755*, p. 141.

speech to the burgesses that this fee was imposed in order to improve the royal quit rents paid upon all land in the colony. The burgesses, of course, could not understand why it was necessary for the governor to take from the people a fee, which was not charged by preceding governors, and which was demanded, as he himself claimed, to facilitate the performance of the duties of his office, for which he received a regular salary and also perquisites. Rev. William Stith, writing to the Bishop of London (April 21, 1753), indicated the popular discontent occasioned by the governor's action:

Sometime after our present governor's arrival and after he had received all the presents from the country which he could at that time hope for or expect, he declared in Council and obtained from them a sort of consent to a power, he is said to have from England, to demand for his own private use and advantage, a pistole upon every patent for land that passed the seal.

He showed that the method of taking up land was fixed by law, and the fees specified, and said: "This attempt to lay taxes upon the people without law was certainly against law, and an evident invasion of property, which gave a very general disgust and alarm to the whole country." For his opposition to the governor, and especially for offering as a toast on a public occasion, "Liberty and property and no pistole," he was heartily disliked by the governor. "I have often said," he wrote,

both before and since his honor's opposition to me, that I look upon the governor as a person of many good qualities, and that he would have made us a good governor had he not have been unhappily led into this wrong step, which hath raised so great a disaffection in the people and caused so general a distrust of him.

He stated that the interests of the crown were involved in the controversy: "Neither is the king's interest less plainly concerned in it. For if this contest between the governor and the people goes on, I will venture to affirm that his majesty will lose twenty pistoles for one the governor gets."<sup>1</sup> The burgesses appealed to the home government through the attorney-general of the colony, whom they sent at the expense of the colony. The decision was virtually in favor of Dinwiddie, although certain concessions were made to the burgesses in order to try to compromise the matter. The colonists so regarded it, but refused in most cases to pay the fee. Thus, by the contention, Dinwiddie failed to secure the increase in his perquisites, and moreover antagonized the colonists.

It was in November, 1753, that he issued the first order in regard to the pistole fee. It was on April 20, 1752, about a year and a half before, that the burgesses granted him £500 as a gift. It seems, therefore, that the burgesses desired to show their willingness to work harmoniously with him. It is worthy of note that the burgesses made no discrimination between Gooch and Dinwiddie in regard to the gift bestowed as each entered upon his administration, for the same amount was appropriated. The present to Dinwiddie, made soon after he reached the colony, was bestowed "as a grateful acknowledgment for his regard to the interest and welfare of this colony."<sup>2</sup> That he should so soon after this exhibit a thoroughly selfish spirit was all the more condemned by the colonists, and contrasted with the magnanimous spirit of his predecessor. This spirit was again shown when, upon the death of the Earl of Albemarle, he sought to have the office of governor-in-chief

<sup>1</sup> *Fulham, MSS., Virginia*, 1st box, no. 43.


<sup>2</sup> *Journal House of Burgesses, 1752-1755*, p. 99.

remain vacant for some time in order that he might get the salary. This seems to have been done, as there elapsed a year and a half between the death of Albemarle (December, 1754) and the appointment of Loudoun (May, 1756). Dinwiddie came to the colony with a definite purpose to apply a plan of expansion and aggression, and to enforce rigidly the policy of the home government as expressed in the instructions. He was to prevent the encroachment of the French, to extend the western boundary of the colony and to promote the Indian trade. Such a policy could only be effectively carried out by a governor who was supported by the Assembly. While the colony would, of course, share in the benefits of the successful execution of this policy, still it was a British rather than a purely provincial policy. Considering this fact, with the selfish dictatorial manner of Dinwiddie, the action of the Assembly in refusing him an appropriation for the expected attack of the French is clearly understood. The Assembly did not persist in this refusal, but later made very large appropriations for the French and Indian War. The relation of Dinwiddie towards Washington at the time of this war was not always pleasant. He not only interfered very seriously with the campaigns by many inconsistent and impracticable orders, but was abrupt and even discourteous in his correspondence with Washington. In January, 1758, after five years of struggling with the problems in a colony which was not in sympathy with him because of his own conduct, he resigned and returned to England. He sought, while governor, to convince the home government that he was very solicitous as to the interest of royal authority in the colony and was endeavoring to prevent the Assembly from unduly influencing the minds of the people. In a letter to the Earl of Halifax (March 12, 1754), at the time of the controversy over the pistole fee, he stated: "I am sorry to find



them very much in a republican way of thinking, and indeed they do not act in a proper constitutional way, but making encroachments on the prerogative of the crown, which some former governor submitted too much to them.”<sup>1</sup> He thus not only sought to justify his own selfish desire in regard to the pistole fee, but also to disparage and to criticize the long, efficient and successful administration of Gooch. There are other instances in his correspondence of the use of the phrase, “the encroachments on the prerogative of the crown.” He, no doubt, thought that he would thus commend himself to the home government and receive encouragement in his rather dictatorial policy. The action of the home government in regard to the pistole fee controversy indicated that he was not altogether supported in his conflicts with the Assembly. The home government was, of course, interested in maintaining the proper loyalty to the crown in the colony, but in fact more concerned with a quiet and peaceful administration in which the governor and the Assembly worked harmoniously for the prosperity of the colony, which result would have a beneficial effect upon trade and thus conduce to the chief end sought by the British government and the merchants. Between the departure of Dinwiddie and the arrival of Fauquier, John Blair, president of the Council, served as governor.

Francis Fauquier assumed the duties of the governorship on June 7, 1758, when the colony was in the midst of the French and Indian War, and worked harmoniously with Washington and the Assembly to bring that conflict to a successful end. He succeeded a royal governor who had rendered himself obnoxious to the colony and had so acted as to shake to some extent the confidence of the people in the crown. Notwithstanding this fact the colonists wel-

 <sup>1</sup> *Dinwiddie Papers*, vol. i, p. 100.

comed him, another royal governor, and as the journal of the House of Burgesses shows, appropriated large sums for him to prosecute the war, although the colony was in debt.<sup>1</sup> This journal contains expressions of the most cordial nature of the opinion of the burgesses regarding him, and declarations of loyalty to the crown. This is all the more noticeable since his administration was so close to the Revolution. It was during his administration that the Stamp Act was passed by Parliament and attempts made to force the colonists to submit to its provisions. While the colonists resisted most strenuously this oppressive measure, there seems to have been no criticism of the governor. From the very beginning of his administration he had endeavored to carry out his instructions only so far as they did not come into conflict with what contributed towards a practical, peaceful conduct of the affairs of the government. He was explicitly instructed to prevent the speaker of the House from serving any longer as treasurer of the colony. Upon his arrival, instead of attempting to execute this instruction, which would have caused a conflict and also deprived him of the services of a useful and influential man, he frankly agreed with him that they would work together for the best interests of the colony, and so informed the Board of Trade. There is a difference of opinion as to the private life of Fauquier. Some hold that he was dissipated, frivolous and fond of gambling, others give just the opposite description. It is, however, true that his death in 1768, after ten years of service, deprived the colony of a governor who appreciated conditions there, and so administered the affairs that even during a most critical period the colonists raised no complaint against him, but always considered him a friend.

<sup>1</sup> *Journal House of Burgesses, 1761-1765*, pp. 203, 212, 216.

It should not be inferred that he submissively agreed to all that the Assembly desired, for there were some occasions on which he held opinions different from the burgesses, and when there was a certain degree of irritation but no serious controversy. Even where such differences did arise, the language used showed that their action was characterized by courtesy and great respect. He did not wish to antagonize the Assembly, and was clever enough to know when to grant their requests. The Assembly, on the other hand, also desired harmony, and in its relations with the executive endeavored to accomplish its ends without open conflict. He did not hesitate to exercise his power over that body when he thought that his position demanded it. In 1765 he dissolved the Assembly for passing the resolution against the Stamp Act, introduced by Patrick Henry. This action, even at so critical a period, seemed not to render him especially obnoxious to the colonists, for he appreciated conditions in the colony and really sought to grant, so far as practicable, their demands. He foresaw in the tendencies of his time signs of independence, and warned Pitt in 1760 that if England continued her oppressive policy, and should impose additional taxation, revolution would result. Under Dinwiddie the House of Burgesses had assumed much power in the directing of military affairs, yet under Fauquier the executive was not interfered with in such matters. In a speech to the Assembly (January 21, 1764) regarding the dissolving of that body, he said: "I cannot do this without expressing the just sense I have of the confidence you so kindly place in me by leaving the defense of your frontiers under my direction. This shows your approbation of the measures I pursued the last summer."<sup>1</sup> It was about 1750 that the British government resumed the rigid enforce-

<sup>1</sup> *Journal House of Burgesses, 1761-1765*, p. 222.

ment of the policy which it had sought to apply from about 1680 to 1725. Dinwiddie, in his effort to execute his instructions and also to gratify his selfish desires, antagonized the colonists, still Fauquier was able so to gain the confidence as to have them trust him as they had not done his predecessor. Between the death of Fauquier (March 3, 1768) and the arrival of Botetourt, John Blair, president of the Council, filled the governorship.

Lord Botetourt, the first governor-in-chief to come to the colony since 1704, arrived in November, 1768. The people were quite ready to show him many expressions of their friendly attitude, but the extravagant style in which he lived served at first to cause the frugal colonists to be a little apprehensive. From about 1765 to 1770 they were, owing to the trade relations with England which resulted in the increased cost of imported goods, compelled to practice self-denial, yet Botetourt was cordially received. His speech to the Assembly a few months after his arrival and the address of the burgesses in reply were very cordial. This address of May 10, 1769, is of special interest presented thus three years after the repeal of the Stamp Act and about six years before the Revolution. The loyalty of the colonists both to the crown and to the royal governor is very pronounced in this address:

The assurances of the royal favor, communicated to us through your excellency, cannot but impress the heart of every Virginian, with the most lively and indelible sentiments of duty and affection. Permit us, then, my lord, to renew our assurances to your excellency of our most cordial and inviolable attachment to his majesty's sacred person and government, the real happiness and prosperity of which have ever been the grand, leading objects of our warmest wishes. We do assure your lordship, with that sincerity, which truth ought ever to inspire, that we esteem as a peculiar mark of the royal attention to

our happiness, your lordship's appointment to preside over us, since we cannot but regard the display of so many virtues and abilities, during the short time of your residence as a sure presage that wisdom and benevolence will eminently distinguish your lordship's administration. We beg leave to assure your excellency that if, in the course of our deliberations, any matters should arise which may in any sort affect Great Britain, they shall be discussed on this ruling principle, that both our interests are inseparably the same.<sup>1</sup>

Of course, one is disposed to question the sincerity of such expressions unless accompanied by facts which serve to prove it. Botetourt had been in the colony seven months and the colonists had an opportunity to demonstrate their attitude towards him. In a speech to the burgesses on May 11, 1769, he declared his intention to inform the king of their expressions of gratitude and loyalty, and of "your kindness to me."<sup>2</sup> This seems to indicate that he was favorably impressed with the reception accorded him by the colonists. The sincerity of both the governor and the burgesses must not be doubted on account of an event which transpired six days later. On May 16, 1769, the House of Burgesses adopted resolutions against sending to England for trial any person charged with crime or felony. This was a "new, unusual, and an illegal mode," and quite contrary to the "long established course of proceeding."<sup>3</sup> In the address to the king, requesting that the act of Parliament providing for this should be repealed, there was no threat of revolution.<sup>4</sup>

In addition to the resolutions just mentioned, the burgesses adopted others, which were in effect a protest against

<sup>1</sup> *Journal House of Burgesses, 1766-1769*, pp. 189, 199.

<sup>2</sup> *Ibid.*, p. 203.

<sup>3</sup> *Ibid.*, Intro., p. 38.

<sup>4</sup> *Ibid.*, p. 215.



the acts of Parliament laying duties upon imports and a declaration "that the sole right of imposing taxes on the inhabitants of this colony is now, and ever hath been, legally and constitutionally vested in the House of Burgesses."<sup>1</sup> On the following day the governor dissolved the Assembly, as he stated, from a sense of duty. "I have heard of your resolves," said he, "and augur ill of their effect. You have made it my duty to dissolve you, and you are dissolved accordingly."<sup>2</sup> When the Assembly was dissolved, the burgesses met in a private house for a two days' session, as they judged it "necessary that some measures should be taken in their distressed situation for preserving the true and essential interests of the colony."<sup>3</sup> Resolutions were adopted in which trade and manufactures were treated at some length, setting forth that owing to the restrictions upon trade, and especially the recent acts of Parliament imposing duties on certain imports, it would be impossible to pay the debts already owed by the colonists to British merchants. As many efforts had been made to secure redress of these grievances without result, the burgesses resolved to adopt a plan of boycotting British manufactures, thinking that this would influence the British manufacturers and merchants from "motives of interest, friendship and justice" to endeavor to obtain this end for them. The colonists were requested to be frugal in the use of British goods, and also not to import them until the objectionable acts of Parliament imposing duties on them should be repealed. Some of the most influential men in the colony signed these resolutions, and among the one hundred and eight signatures were those of Peyton Randolph, speaker of the House, Richard Henry Lee, George Washington, Thomas Jefferson and

<sup>1</sup> *Journal House of Burgesses, 1766-1769*, p. 38.

<sup>2</sup> *Ibid.*, p. 218.

<sup>3</sup> *Ibid.*, p. 39.

Thomas Nelson. After these resolutions were signed, toasts were drunk to the king and the royal family, Lord Botetourt, "a speedy and lasting union between Great Britain and her colonies" and "the constitutional British liberty in America and all true patriots, the supporters thereof."<sup>1</sup> There was nothing revolutionary in these resolutions, and the toasts which followed them indicated the loyalty of the colonists and their desire only to maintain their rights as British citizens. It was not, however, so much a political as an economic protest against the policy of the British government. The governor informed the Assembly, when it met in November of the same year, that the home government had decided to repeal the acts laying duties on glass, paper and paints. The Assembly expressed the gratitude for this, but advised that all acts of Parliament imposing taxes should be repealed.<sup>2</sup> It was, no doubt, a sincere motive that prompted the burgesses in their address to the governor on this occasion to state: "Your lordship's great regard and attention to the welfare and true interest of this colony had before endeared you to us all, but your generous and noble declarations upon this occasion demand our warmest and most grateful acknowledgments."<sup>3</sup>

The attitude of the Assembly towards the home government, and also towards the governor, was clearly shown in an appropriation made December 13, 1769. The Assembly had wished to extend the boundary line of the colony, and did not refuse to conform to the plan adopted by Botetourt and to appropriate £2500 for running the line between the colony and the lands of the Cherokee Indians. The resolution for this purpose was as follows: "But, if unfortunately for this colony his majesty hath already taken his ultimate

<sup>1</sup> *Journal House of Burgesses*, Intro., pp. 42-43.

<sup>2</sup> *Ibid.*, p. 226.

<sup>3</sup> *Ibid.*, p. 233.

resolution to confine his subjects to the line proposed by your excellency, we must humbly acquiesce, and will furnish the £2500 sterling according to the estimate you have been pleased to communicate to us.”<sup>1</sup> The cordial relations which Botetourt sustained to the burgesses near the close of his administration may be inferred from a statement made on May 30, 1770, to that body. “I will again,” said he, “implore his majesty, as immediately as possible, to indulge his House of Burgesses in all their reasonable desires. To do less would be to neglect my duty.”<sup>2</sup>

On June 22, 1770, several members of the House of Burgesses and certain merchants of the colony formed an association for the encouragement of a united effort in refusing to use British goods until the acts of Parliament laying duties on certain articles were repealed. Botetourt, in a letter to the secretary of state, did not hesitate to say that the British merchants were responsible for this organized protest.<sup>3</sup>

After this study of the most important events of Botetourt's administration, indicating also the action of the British government with reference to the colony, it is of interest to notice the “additional” instructions furnished him on August 21, 1768, just before he came to the colony. He was explicitly directed to inform the Assembly of the royal displeasure occasioned by the questioning of the authority of Parliament, and their action in sending a circular letter to other colonies inviting concurrence. In these instructions it was stated: “Whereas the Council and House of Burgesses of Virginia have concurred in certain resolutions and proceedings denying and drawing into question the power and authority of Parliament to enact laws bind-

<sup>1</sup> *Journal House of Burgesses, 1766-1769*, p. 334.

<sup>2</sup> *Ibid.*, 1770-1772, p. 34.

<sup>3</sup> *Ibid.*, p. 27.

ing upon the colonies . . .” He was to lay before the Assembly an act of Parliament, “For the better securing the dependency of his majesty’s dominions in America upon the crown and Parliament of Great Britain.” “You will not fail to lay before them the fatal consequences which must ensue from attempting to introduce unjustifiable and unconstitutional distinction that can have no other effect but to weaken the authority and lessen the influence of the British Empire.”<sup>1</sup> He was to suspend any councillor who should continue to act with the burgesses after dissolving that body, should that become necessary. In order to “suppress any sudden commotion of the populace,” he was to communicate with the commander-in-chief of the royal forces in America, should any such occasion arise. As has been shown, Botetourt did not attempt to execute his instructions in the spirit in which they were drafted. When he did find it his duty to dissolve the Assembly, there was apparently no criticism of his action. By wisdom and patience, he succeeded in his effort to have the home government to remove some of the causes at least of the grievances of the colonists, and also to calm temporarily their spirit of resistance.

He died, October 15, 1770, after having been governor for two years. In a speech to the Assembly, William Nelson, president of the Council, who served as governor until the arrival of Dunmore, referring to the death of Botetourt, said that it was a

loss, the more to be lamented by us, as we were the frequent witnesses of his excellency’s constant and uniform exertion of every public and private virtue and had abundant reason to be convinced that he made the real happiness of this colony an object of his most ardent wishes.<sup>2</sup>

<sup>1</sup> C. O. 5, 1375, p. 54.

<sup>2</sup> *Journal House of Burgesses, 1770-1772*, p. 120.

His death occasioned sincere sorrow in the colony and the Assembly sought to leave a visible expression of the high esteem in which he was held by erecting a statue in honor of him. The resolution unanimously adopted for this purpose, and directing that the committee appointed should purchase it in England, specified that it should bear a "proper inscription, expressing the grateful sense this House entertains of his lordship's prudent and wise administration, and their great solicitude to perpetuate, as far as they are able, the remembrance of those many public and social virtues which adorned his illustrious character."<sup>1</sup> This statue, costing seven hundred guineas, was erected in 1773 in the portico of the Capitol in Williamsburg. In 1797 it was removed to William and Mary College, where it is still standing.

The Earl of Dunmore reached the colony in September, 1771. In a private letter to the Earl of Hillsborough, written from New York under date of July 2, 1771, Dunmore expressed his unwillingness to reside in Virginia. Regarding his appointment he said :

I grant the advantage in point of emolument, but the climate is such that it will oblige me to live without my family, which will make my residence in that country, where there is little or no society, so tiresome that I cannot be certain I should be able to stay there any time, and therefore it might be more advantageous for me as well as my family that I should remain in a place where there is a harmony between me and the people, and at the same time suits so well with my disposition that I cannot foresee anything which may interrupt the design I had in coming to this country at first, but may continue here as long as his majesty shall judge proper, in consequence of which I have referred your lordship's letter to Mr. Tryon, and if he agrees to the change, I shall be pleased with being indulged in my desire of remaining in New York.<sup>2</sup>

<sup>1</sup> *Journal House of Burgesses, 1770-1772*, p. 138.

<sup>2</sup> *C. O. 5, 154*, pp. 13, 16.



Governor Tryon of New York did not agree to exchange his position for the governorship of Virginia, so Dunmore reluctantly assumed his duties. The address of the burgesses to him at the first Assembly held (February 10, 1772) indicated a friendly attitude. The governor, in response, was very positive in the declaration of his purpose to serve the colony faithfully. "I have ever considered," said he, "the true interest of government and of the people to be inseparable, and make this principle the rule of my conduct; therefore, I flatter myself that you will never have cause to refuse me the support which you are now pleased to promise me."<sup>1</sup> Within a few days he had an opportunity to prove the sincerity of this assertion. When the burgesses objected to the fees which he had established for the benefit of his secretary, he readily submitted a list of them and acquiesced in the decision of the House that they be discontinued.<sup>2</sup> He said: "I will not only take care that my clerk shall not in future receive any, but also that he shall return those which he has received since my arrival in this colony."<sup>3</sup> He thus showed his desire to avoid a dispute with the burgesses over a matter which was quite similar to the one which caused Dinwiddie so much trouble and finally resulted in his resigning. In a letter to the Earl of Hillsborough in March, 1772, he however showed a spirit of selfishness, but cleverly endeavored to conceal it. He requested a large land grant, and stated that it

will be a means of my ingratiating myself very much with the people of this colony, as it will show by my desire of acquiring an interest in this particular country that my attachment to New York did not proceed from any dislike to this,

<sup>1</sup> *Journal House of Burgesses, 1770-1772*, pp. 156, 163.

<sup>2</sup> *Ibid.*, pp. 173, 185.

<sup>3</sup> *Ibid.*, p. 200.

and I think it could not fail of producing good effects to his majesty's service.

He requested a grant of 100,000 acres free of quit rents, "to be located in any part which I may choose of the lands newly given up by the Indians," and also 20,000 acres for his secretary.<sup>1</sup>

Dunmore at first worked harmoniously with the Assembly, as evidenced by the journal of the House of Burgesses and the various acts signed by him.<sup>2</sup> He stated in a letter to the Earl of Dartmouth (March 31, 1773) his reason for approving certain legislation, which indicated that he did not think it advisable to execute his instructions rigidly: "Perhaps by taking my instructions in the most liberal sense," said he,

I may not have been empowered to pass any new act for emitting paper money, yet as that instruction empowers the governor to pass an act for emitting £10,000, and Mr. President Nelson, during his administration passed an act for emitting the sum of £30,000, which was approved by his majesty, all of which by act of Assembly are redeemable in the year 1775, I thought it not advisable to let them feel the weight of government too severely, by adhering rigidly to the exact letter of the instruction at a time when I saw that it must have greatly distressed their trade, especially when I consider this not as a new emission of paper money, but the substituting of good in the place of bad for the same number of years.<sup>3</sup>

Dunmore, in this statement to the home government, thus explained the conciliatory policy which he was following. In the same letter he referred to a "little ill-humor in the

<sup>1</sup> C. O. 5, 154, p. 20.

<sup>2</sup> *Journal House of Burgesses, 1770-1772*, pp. 314, 317.

<sup>3</sup> *Ibid.*, 1773-1776, intro., p. 10.

House of Burgesses," which he did not, however, consider very serious. But the criticism of a certain administrative act by the burgesses and his explanation of the matter was treated at some length in the same letter. "The House of Burgesses in an address to me," said he, "seem at least obliquely, in some degree, to censure my conduct in the mode of bringing to justice the forgers of their paper money." In a full detailed account he justifies his action. It is worthy of mention that in the letter to the home government explaining this matter he acknowledged his dependence on the Council for advice. "Your lordship must then know," said he, "that I am here situated in a large colony without one single member of the Council to advise with on any emergency, there being only one within twelve miles, and the rest from that to two hundred miles distant."<sup>1</sup> His desire fully to adjust the matter so as to avoid any censure from the British government was shown in the closing sentence of that letter: "I flatter myself that neither his majesty nor your lordship will, if I have done wrong, which I shall be entirely sorry for, impute it to any but the real cause, an error in judgment."<sup>2</sup> The tone of the whole letter is rather indicative of a willingness to submit to conditions, instead of precipitating a dispute with the burgesses. Still he antagonized the colonists by proroguing the Assembly from time to time, and thus prevented a free expression of the popular will. On March 12, 1773, nineteen days before the above letter was written the House of Burgesses passed the resolution for the appointing of the committee of correspondence, and on March 16th this committee sent circular letters to the assemblies of other colonies asking their opinion as to the plan of establishing such committees in all

<sup>1</sup> *Journal House of Burgesses, 1773-1776*, intro., p. 10.

<sup>2</sup> *Ibid.*, p. 11.

the colonies, so that there might be united resistance to any further oppressive measures of the British government.<sup>1</sup> It is not necessary here to give an account of the events which precipitated the Revolution. Enough has been stated to indicate that there was a spirit of resistance in the colony, which needed only some such attempt as the forcing of tea upon the colonists or the Boston Port Bill to influence them to revolt.

Notwithstanding the powers conferred upon the governor, there were still but few matters of purely local concern which were not referred to the home government for advice thereon or for confirmation of the action of the governor. He was the representative of the king in the colony, and according to his instructions was expected to see that the royal will was minutely executed. The close connection between the colony and the British government is shown by the regular correspondence of the governor with the Board of Trade, the secretaries of state, the auditor-general of the revenues, the commissioners of the customs and other officials. In addition to the formal instructions, the governor was, from time to time, informed as to the opinion of the home government on his policies. The actual condition of the administration was contained in the regular reports and the occasional special letters forwarded by the governor. All appointments and removals except in very minor cases, all petitions of the burgesses to the king, all acts of Assembly, all revenue accounts, and land grants were regularly sent by the governor to the British government. The position of the governor was a very difficult one to fill with satisfaction both to the home government and to the colony. As has been shown, he was greatly circumscribed in his action by the minute instructions and the constant commu-

<sup>1</sup> *Journal House of Burgesses, 1773-1776*, p. 12.

nications from England. The self-governing spirit began to assert itself after 1700, and it was not an easy matter to execute the royal instructions. Not only the House of Burgesses, but also the Council, which was the governor's cabinet, on some occasions after 1700, seriously interfered with the executive in the administration of the government. The formal instructions from 1700 to 1775 show that the policy of the home government was practically uniform and that the governor was expected to enforce it. The controversies between the governor and the Council and the persistent opposition of the burgesses, and even the assumption by that body of certain executive functions of the governor, show that there was a strong tendency towards self-government. It seems that there was not, necessarily, after 1700, an increasing dislike of all royal governors, for whenever a governor really endeavored to serve the colonists or whenever they governed themselves through the president of the Council, there was usually quietude and prosperity. It would not be correct to state that the growing discontent of the colonists was due altogether to their desire for self-government, and that they openly demanded of the home government a recognition of this right. The governors themselves were responsible for much of the popular spirit. For the determination of the dictatorial governors to force the colonists to comply with the royal instructions, quite naturally influenced them to desire relief from a system which placed such men over them. Still whenever a royal governor sought to know and to minister to the needs of the colony, there was no expression of such a desire.

Three of the four governors who served from 1624 to the beginning of the Protectorate (1652) were evidently satisfactory to the colonists. Wyatt, Yeardley and Berkeley (first administration) were supported in their efforts to administer the affairs of the colony. Harvey was, however,



objectionable from the first year of his administration, because of his dictatorial policy, and was removed. After the period of the Protectorate (1652-1660), during which the governors were elected by the House of Burgesses, the colony passed through a period covering practically the remainder of the seventeenth century, during the larger part of which the royal governors were dictatorial. Berkeley, Culpeper and Howard stand out prominently as the exponents of selfishness and oppression. Andros, although not as tyrannical and arbitrary as the three governors just mentioned, still failed to fill the office with satisfaction to the colonists and was removed. Jeffreys and Chicheley usually endeavored to pursue a policy of peace during their brief administrations in order to avoid serious difficulty. Nicholson endeavored to conciliate the colonists, and seems to have been generally supported, but after being governor of another colony for a few years returned, and in his second administration so antagonized the colonists as to necessitate his removal. There were nine governors who served from 1700 to 1775. The three who experienced the greatest difficulty in executing the duties of the office were Nicholson, Spotswood and Dinwiddie. The first two were removed and the last resigned, but had he remained in office much longer he also would have been removed. There were five governors during whose administrations the colony prospered and for whom the colonists had a high regard, Nott, Drysdale, Gooch, Fauquier and Botetourt. Of these, one resigned of his own accord after twenty-two years of service in order to return to England, and four died in office. The ninth governor, Dunmore, arrived in the colony at a time when resistance to British oppression had almost been determined upon. At the beginning of his administration he did manifest a conciliatory spirit, but since the attitude of the colonists was so pronouncedly anti-British, it was not long

before it was necessary for him to adopt strenuous measures in order to attempt to check open resistance.

It might be maintained that the strenuous activity of one-third of the governors after 1700, with but ineffectual results, so far as carrying out royal instructions was concerned, and of course the failure of the other two-thirds to accomplish the desired end, brought about conditions which no doubt provoked the British government to attempt a more rigid enforcement of a policy which for more than half a century it had endeavored to apply to the colony. It is a noteworthy fact that the three governors who showed strenuous activity in executing royal instructions, and in seeking their own aggrandizement, were removed on account of their inability to administer the affairs of the colony with satisfaction to the colonists and the approval of the home government. If two-thirds of the governors were not more desirous of executing instructions than in meeting the needs of the colony, it would seem that the home government would have certainly considered this a sufficient cause for removal, but the contrary was the case. The fact remains that so long as a governor could keep the colony quiet and prosperous, and trade with England was successful, thus increasing the royal revenues and furnishing the British merchants a lucrative return for their investment, nothing was said about the royal instructions, the royal prerogative or the popular spirit of the colonists.

## CHAPTER III

### THE COUNCIL

THE Council dated from the very beginning of the colony, and, in fact, before the first permanent settlement was effected at Jamestown provision had already been made for the administration of the government. On April 10, 1606, James I granted to the Virginia Company letters patent for the establishment of two colonies in America, and the government of the southern colony was to be administered by a resident Council of thirteen members. The Council in England, to which the supervision of the colony had been entrusted, appointed only seven to constitute the first Council of Virginia.<sup>1</sup> The power of the first Council of the colony was almost absolute. The arbitrary character of this body is shown by the fact that it was self-perpetuating. The appointment and removal of its own members, and the election of the president of the Council were powers which it enjoyed.<sup>2</sup> This system by which all the functions of government were vested in the Council lasted only two years, for the second charter granted to the London Company in 1609 provided that the Council should be superseded by a governor who was given almost absolute authority.<sup>3</sup> The

<sup>1</sup> A. Brown, *The Genesis of the United States*, vol. i, p. 56.

<sup>2</sup> Chitwood, pp. 10, 11.

<sup>3</sup> Brown, vol. i, pp. 208, 233; W. Stith, *History of Virginia*, app., p. 2. The London Company controlled the southern colony and the Plymouth Company the northern colony. They were the two divisions of the Virginia Company.

power of the governor over the Council extended to the removal of the members, consequently that body became simply his advisory committee.<sup>1</sup>

In 1619 the first legislative assembly met, but there was no clear separation of the functions of government into executive, legislative, and judicial. The governor and the Council in their legislative capacity sat with the burgesses, which practice was continued until about 1663. The Council continued to exercise judicial functions. This body, sitting with the governor, discharged their judicial duties, and agreed on their executive measures while sitting as a council of state.<sup>2</sup> The place of meeting of the Council in its three-fold capacity is a matter of some degree of interest. The Assembly occupied its own statehouse, certainly by 1643.<sup>3</sup> Thus in its legislative capacity the Council, from 1619 to 1643 and later, met at the seat of government and until about 1663 sat with the burgesses.<sup>4</sup> But in its executive, and sometimes in its judicial capacity, it met at the governor's residence, the home of some member of the Council, or wherever the governor should convene it. This was especially true of the seventeenth century, but with the beginning of the eighteenth century the Council met for all purposes at the Capitol.

In 1624 royal government was established in Virginia, but the colony passed through the transition from the pro-

<sup>1</sup> Brown, vol. i, p. 380; Beverley, p. 186.

<sup>2</sup> Hening, vol. i, pp. 114-118; Chitwood, p. 33; Beverley, p. 187; Miller, p. 17; Moran (*Rise and Development of the Bicameral System*, pp. 46, 47) thinks that this separation took place in 1680, but reference to "governor and Council" and the "House of Commons" laying a levy in 1663 seems to disprove this statement. Hening, vol. ii, p. 204.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. xii, pp. 46, 48; L. G. Tyler, *The Cradle of the Republic*, p. 115.

<sup>4</sup> Hening, vol. ii, pp. 196-207; Miller, p. 40; *Journal House of Burgesses, 1659/60-1693*, p. 21.

prietary government without any violent change.<sup>1</sup> The councillors were, however, after 1624 appointed by the king. The commissions issued to the governors for the next twenty-five years show the gradually increasing power of the Council as authority was vested in the governor and Council jointly.<sup>2</sup> The power of the Council prior to 1660, with the exception of the period of the Protectorate, was on the ascendant, but with the return of Berkeley as governor this growing influence was retarded.<sup>3</sup> After Berkeley, Culpeper, and Howard the Council gradually resumed its place in the administration of affairs. The constitution of the Council, the source of its power, and the exercise of its functions must be studied in order to understand the frequent conflicts between the Council and the governor, necessitating in some cases action on the part of the home government, and which on certain occasions resulted in the removal of the governor. While the councillors, after 1624, were commissioned by royal authority, still their appointments were, after 1660 especially, almost always upon the recommendation of the governor.<sup>4</sup> From time to time he furnished, through the Board of Trade, a list of "gentlemen recommended to succeed to the Council on vacancies."<sup>5</sup> The king did not in some cases, at least in the seventeenth century,

<sup>1</sup> Osgood, vol. iii, p. 79.

<sup>2</sup> T. Rymer, *Foedera*, vol. xvii, p. 618; vol. xviii, pp. 311, 980; vol. xx, pp. 3, 484; *Va. Mag. Hist. and Biog.*, vol. ii, pp. 51, 281, 393; vol. viii, pp. 129, 260; vol. ix, p. 38; Osgood, vol. iii, p. 86; Instructions to the governors.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. ii, p. 281; vol. xi, pp. 50, 57.

<sup>4</sup> *Ibid.*, vol. iii, pp. 115, 133; vol. iv, pp. 22, 49; *C. O.* 5, 11, fo. 160; 210, 114; *Dinwiddie Papers*, vol. i, pp. 383, 385; *Cal. St. P. Col.* 1677-1680, no. 1211; 1685-1688, no. 1728; 1696-1697, no. 259. During the Cromwellian period councillors were nominated by the governor and elected by the House of Burgesses. Hening, vol. i, p. 517.

<sup>5</sup> *Dinwiddie Papers*, vol. ii, p. 441; *C. O.* 324, 48, pp. 14, 56, 74; 51, p. 32.



wait for the recommendation of the governor but promised certain applicants the next vacancies, and so instructed the governor.<sup>1</sup> As an indication that the members of the Council were direct appointees of the crown, their commissions bore the royal sign manual.<sup>2</sup> While the governor had the power of recommending persons for royal appointment to the Council, still there was in fact much influence brought to bear both in Virginia and in London to have certain men appointed. Influential men in England were frequently prevailed upon to render assistance to prospective councillors, and this was especially true of prominent merchants and others who were interested in the development of the colony.<sup>3</sup>

Membership in the Council was limited to men of wealth and social position. In the letters of recommendation from the governor, such phrases as the following regarding the qualifications of certain applicants occur. It was stated that they were "gentlemen of estate and standing," or "of a plentiful estate and good family."<sup>4</sup> Gooch, in writing to the Board of Trade, stated that the councillors were the "principal gentlemen of the country."<sup>5</sup> Councillors filled the most important offices in the colony and were also, until about 1700, naval officers and collectors, and so handled practically all of the governmental funds. The reason for

<sup>1</sup> *Cal. St. P. Col.*, 1675-1676, no. 833; 1681-1685, no. 1428.

<sup>2</sup> *Ibid.*, 1689-1692, no. 1834; *Journal Council of Va.*, MSS., 1721-1734, p. 470; *Journal Board of Trade*, vol. xxxi, p. 10; vol. liii, p. 106; *British Museum King's MSS.*, no. 205; *C. O.* 324, 51, p. 32; *Spotswood Letters*, vol. ii, p. 38.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. xxi, p. 389; *W. and M. Col. Quart.*, vol. iii, pp. 15, 232; *Spotswood Letters*, vol. ii, p. 40; Bassett, Intro., p. 48.

<sup>4</sup> *W. and M. Col. Quart.*, vol. ii, p. 6; *Cal. St. P. Col.*, 1696-1697, no. 956; 1697-1698, no. 951; 1689-1692, no. 1880.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 114.

instructing the governor to appoint only men of means and not "necessitous people or people much in debt" was that should poor men holding important offices become defaulters, the government would lose the funds misappropriated, while a man of some means would be compelled to reimburse the government. The influential families which controlled the Council, and thus to a large extent the government of the colony, frequently intermarried and so perpetuated their influence and power.<sup>1</sup> In 1710 there were as many as six of one family serving as councillors.<sup>2</sup> The three Byrds (William I, II, III) served in the Council and in other important offices during the period (1670-1775). William Byrd II was for thirty-seven years a councillor and also filled the office of receiver-general, and for a while was president of the Council.<sup>3</sup> That several of the factions in the Council and the controversies with the governors were due to family influence may be readily inferred.<sup>4</sup>

The oaths taken by councillors were administered by the governor. The governor himself always took the oath of office upon his arrival in the colony, and since there was no higher authority than the Council, the duty of swearing the executive devolved upon that body. The governor first took the oath and then swore the councillors.<sup>5</sup> The importance attached to the oath of the councillor is indicated by its

<sup>1</sup> For example: The Berkeley, Bassett, Ludwell, Byrd, Blair, Wormley, Page, Burwell, Harrison, Carter, Lee, Diggs, and Randolph families. (Bassett, pp. 52, 54; *Sainsbury Papers, 1715-1720*, p. 661.)

<sup>2</sup> Bassett, p. 68.

<sup>3</sup> *Ibid.*, pp. 14, 41.

<sup>4</sup> *Ibid.*, pp. 65, 72; *Spotswood Letters*, vol. ii, p. 156.

<sup>5</sup> Instructions to the governors from Howard (1683) to Dunmore (1771); *Va. Mag. Hist. and Biog.*, vol. xiv, pp. 264, 266; *Journal Council of Va.*, MS., 1692-1693, p. 144; 1705-1721, p. 249; *Cal. St. P. Col.*, 1681-1685, no. 1552; 1696-1697, no. 966; 1697-1698, no. 1038.

being considered sufficient for the exercise of the duties of the governor by a former councillor, who was appointed to the governorship temporarily.<sup>1</sup>

The members of the Council were appointed practically for life, for while no definite term was specified, and the royal commission was valid during good behavior,<sup>2</sup> nevertheless the governor was given power to suspend any member of the Council whenever he deemed it necessary. This authority was not possessed by the governor before 1676, but just after Bacon's Rebellion it was conferred upon him.<sup>3</sup> This power was not, however, absolute, for his action was always subject to review by the home government.<sup>4</sup> The instructions to the governors from Culpeper (1682) to Dunmore (1771) directed that councillors were not to be suspended without good cause. The governor was not to suspend a councillor "without good and sufficient cause, nor without the consent of the majority of the said Council, signified in Council, after due examination of the charge against such councillor and his answer thereto." But in this same clause occurred the statement that if he should have "reasons for suspending of any councillor, not fit to be communicated to the Council," he might suspend him without the consent of that body.<sup>5</sup> While the governor was

<sup>1</sup> *Journal Council of Va.*, MS., 1692-1693, p. 128.

<sup>2</sup> A striking example of the length of the term of service rendered by a councillor is furnished by Commissary James Blair, who served in the Council from 1693 to 1743, thus extending his term over a half century. (D. E. Motley, *Life of Commissary James Blair*, Johns Hopkins University Studies, ser. xix, no. 10, p. 43.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 56; Beverley, p. 187.

<sup>4</sup> Instructions to the governors from Culpeper (1682) to Dunmore (1771); *Cal. St. P. Col.*, 1689-1692, no. 1099.

<sup>5</sup> The power to suspend a councillor was conferred on the governor,

given this power, there were very few examples of the exercise of it before 1700, and practically none after that date. Furthermore, the Council itself might, if it saw fit, exclude a member; such action, however, usually received the approbation of the governor.<sup>1</sup> A member desiring to retire, made application through the governor to the king for permission to resign, the warrant for which, if granted, bore the king's signature.<sup>2</sup> The governor and Council might, however, grant such a request temporarily while waiting for the action of the home government.<sup>3</sup>

The Council, originally seven, in 1630 numbered only two, but was gradually increased to a membership of eighteen under Berkeley in 1641. It was later reduced to thirteen, but was usually twelve.<sup>4</sup> The governors from Culpeper to Dunmore were instructed not to act with fewer than five councillors. Before Culpeper, three councillors constituted a quorum, and a fine of forty shillings was imposed for non-attendance. Owing to the distance of the residences of several of them from the seat of government, and the poor roads, especially in winter, it was sometimes quite difficult to get more than a quorum.<sup>5</sup> Before about 1700 the regular meetings of the Council were sometimes

lest some member of the Council should become too pronounced in his popular sympathies to serve longer in the royal governor's advisory board, and the Council should hesitate to declare his seat vacant.

<sup>1</sup> *Cal. St. P. Col.*, 1696-1697, nos. 966, 973.

<sup>2</sup> *Ibid.*, 1685-1688, no. 1551; 1689-1692, no. 92; 1697-1698, no. 951; *Cal. Va. St. P.*, vol. i, p. 76.

<sup>3</sup> *Cal. St. P. Col.*, 1689-1692, nos. 2176, 2177.

<sup>4</sup> Instructions to the governors; *Cal. St. P. Col.*, 1661-1668, p. 400; 1689-1692, no. 1099; 1697-1698, no. 1038; *Journal Council of Virginia*, MS., 1698-1703, p. 15; *British Museum King's MSS.*, no. 205; *British Museum Add. MSS.*, no. 30372, p. 46; *Dinwiddie Papers*, vol. i, p. 383.

<sup>5</sup> *Cal. St. P. Col.*, 1689-1692, no. 1302; 1697-1698, no. 1043; *Spotswood Letters*, vol. ii, pp. 8, 17.

postponed on account of the non-attendance of the members, and on some occasions all would not remain to complete the matters of business.<sup>1</sup> In his instructions the governor was empowered to suspend a councillor for neglecting to attend the meetings if in the colony. A councillor absenting himself from the colony without leave from the governor, and especially without permission from the home government, was to forfeit his seat in the Council.<sup>2</sup> A study of the Journal of the Council in executive and in legislative sessions shows that after about 1700 the interest of the Council in both administrative and legislative affairs was very pronounced and that the attendance was more regular than formerly, a full Council being present at some meetings. The members of the Council did not reside at the capital even as late as 1773.<sup>3</sup>

The members of the Council served at first, as such, without compensation.<sup>4</sup> They were by 1625, however, paid in tobacco, which by 1656 was 20,000 pounds. By 1673 they were granted an allowance of £50 out of the two shillings per hogshead duty, which salary was gradually increased to £350 by 1676, and was £600 per year by 1740, and further increased to £1200 under Dinwiddie and the succeeding gov-

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 98, 162; *Cal. St. P. Col.*, 1689-1692, no. 1845; 1693-1696, no. 2185.

<sup>2</sup> *C. O.* 324, 50, p. 99; 51, p. 31. William Byrd obtained permission from the lords of the treasury to go to England on business pertaining to his office as receiver-general and remained there for three years. The Board of Trade recommended his removal, but he was able to bring influence to bear to prevent it on condition he returned on the next ship. *Acts Privy Council, Col.*, vol. ii, no. 1321.

<sup>3</sup> *Journal House of Burgesses, 1773-1776*, Intro., p. 10.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. ii, p. 116; Chitwood, p. 43. They were not as a rule allowed a salary in the other colonies. Greene, *Provincial Governor*, p. 78.



ernors.<sup>1</sup> This salary was divided among them according to their respective attendance on the Assembly and as judges of the General Court, as well as their services as an advisory board to the governor.<sup>2</sup> Those who attended the courts of oyer and terminer received their proportion of £100, afterwards increased to £200, allowed for each court.<sup>3</sup> The salary of the councillors was paid out of the revenue of two shillings per hogshead duty on exported tobacco, upon a warrant on the receiver-general, signed by the governor in Council.<sup>4</sup> Increase in salary was only allowed upon authority from the home government. The royal supervision of such matters is shown by the order of the king (March 7, 1753), directing the leaders of the treasury to issue the necessary warrant for paying the judges of the General Court, according to their request, £1200 annually out of the two shillings per hogshead duty.<sup>5</sup> This was, of course, the special order of the lords of the treasury authorizing the increase in the salary. The warrants issued by the governor regularly for the councillors' salaries were subject to ex-

<sup>1</sup> *Dinwiddie Papers*, vol. i, pp. 353, 390; Henning, vol. i, p. 423; vol. ii, pp. 359, 392; vol. iii, p. 348; *British Museum King's MSS.*, no. 205, p. 249; *British Museum Add. MSS.*, no. 30372, p. 46.

<sup>2</sup> Hartwell, Blair, and Chilton, p. 34.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. iii, pp. 117, 122; *Journal Council of Va.*, MS., 1705-1721, p. 43; 1721-1734, p. 349; *Dinwiddie Papers*, vol. i, pp. 353, 390; *C. O.* 5, 67, p. 585.

<sup>4</sup> *Cal. St. P. Treas. Books and Papers, 1731-1734*, no. 152; *Journal Council of Va.*, MS., 1705-1721, p. 43. The statement by Miller that councillors were paid "from the general treasury as in the case of burgesses" is incorrect. *Legislature of the Province of Virginia*, p. 144.

<sup>5</sup> *Journal Board of Trade*, vol. lxi, p. 146. The clerk of the Council in its legislative capacity, received 10,000 pounds of tobacco each session of the Assembly, and in executive capacity £50, later £150 a year out of the two shillings per hogshead duty, also perquisites, which in 1763 were about £300 a year. Blathwayt, *Virginia Papers*, MS.

amination by the lords of the treasury, but it was not necessary to have a warrant from the treasury twice a year in order to pay them.

The privileges enjoyed by the councillors on account of their social and political position may be easily imagined. They and their families were, until near the close of the seventeenth century, exempted from taxation and from muster.<sup>1</sup> They enjoyed freedom from arrest, and until about 1700 exemption from the ordinary summons and process of law, and no one was permitted to speak in a derogatory manner of a councillor. They tried cases in which they themselves were involved, and frequently ignored notices sent them of suits instituted against them, but after about 1700 were not exempted from the ordinary process of summons by writ, except during the session of the Assembly.<sup>2</sup>

That there were opportunities for fraud by councillors may be reasonably held, since they filled the offices of trust and profit, and then in Council passed on their accounts and reports, which examination was sometimes not very critical.<sup>3</sup> The members of the Council held the offices of secretary, auditor, receiver-general, and for a certain period the positions of naval officers and collectors, and other less important offices. They were also the commanders of the militia in the counties. They, therefore, held the most important appointments and, in addition, the highest civil and military offices of the counties, and for a certain period really monop-

<sup>1</sup> Hening, vol. i, p. 307; *Va. Mag. Hist. and Biog.*, vol. iii, p. 102. The burgesses agreed to this, as councillors up to about 1660 did not receive large salaries, but after 1677 when their salary was £350 and later £1200 exemption from taxation was not granted.

<sup>2</sup> Hening, vol. ii, p. 464; vol. iv, p. 119; vol. v, p. 495; vol. vi, p. 330; *Cal. St. P. Col.*, 1669-1674, pp. 200, 476; 1696-1697, no. 46; Hartwell, Blair and Chilton, p. 34; Chitwood, p. 57.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. iv, p. 52; *Sainsbury Papers*, 1691-1697, p. 345; *Cal. St. P. Col.*, 1696-1697, p. 610.

olized them.<sup>1</sup> It was the income from the percentage on the funds handled in these offices that made the position of councillor a lucrative one. The office of collector was incompatible with that of judge, and the position of councillor unfitted them for auditing their own accounts. They usually farmed the quit rents for the counties near their homes, and thus in different capacities both bought and sold this royal revenue.<sup>2</sup> The Board of Trade was not unmindful of the encouragement for fraud offered to the governor and the Council, and sought to prevent it.<sup>3</sup> The people of the colony did not pass unnoticed certain irregularities. There was, for example, about 1700, popular discontent caused by the purchasing of quit-rent tobacco privately by the governor and the Council, when it should have been sold publicly by the auditor.<sup>4</sup> In the instructions to Nicholson and later governors it was specified that this tobacco should be publicly sold at the county courts. A striking example of the effort of the British government to check abuses in the colony was the royal order (1699) forbidding councillors serving as naval officers and collectors. They quite naturally objected and enlisted the coöperation of Nicholson in their attempt to have this order revoked. Bruce,<sup>5</sup> states that the home government did not persist in its determination to deprive councillors of these lucrative offices. The record of the names of those who filled these offices after 1700 proves the incorrectness of Bruce's statement. As efficient men

<sup>1</sup> *Cal. St. P. Col.*, 1677-1680, no. 1637; Hartwell, Blair, and Chilton, p. 33; *Va. Mag. Hist. and Biog.*, vol. x, p. 215.

<sup>2</sup> Hartwell, Blair, and Chilton, pp. 24, 33; *Cal. St. P. Col.*, 1696-1697, p. 610.

<sup>3</sup> *Cal. St. P. Col.* 1689-1692, p. 659; 1697-1698, p. 401.

<sup>4</sup> *Ibid.*, 1696-1697, p. 609; *Sainsbury Papers*, 1691-1697, pp. 335, 342; Hartwell, Blair, and Chilton, p. 56.

<sup>5</sup> *Instit. Hist. of Va.*, vol. ii, p. 378.

were in demand and these positions were important, it took, of course, a year or two to make the change. That the councillors frequently used their official positions to serve their own personal advantage is quite certain. They accomplished this, for example, by monopolizing the Indian trade, buying tobacco from poor planters, encouraging illegal trade by ship, defrauding the quit-rents revenue, and engaging in land speculation.<sup>1</sup> Colonel William Byrd, for example, was a large landowner, and in Council approved land grants, and then as escheator legally declared land lapsed.<sup>2</sup> It is not strange that the Council was accused of having the preference over others whenever escheated or other land was to be disposed of.<sup>3</sup> It seems that the irregularities on the part of the Council were largely confined to the period previous to about 1720, as the latter part of the colonial period was generally characterized by efficient and valuable service.

The members of the Council, while holding royal commissions, were, however, in a measure the appointees of the governor, as he recommended them.<sup>4</sup> That the governor was expected to exercise authority over the councillors and not to be subject to them was indicated by the clause in his instructions to the effect that he should communicate to the Council only so much of this royal document as he should deem advisable.<sup>5</sup> Before Howard's administration, according to an authority, writing about 1698, however, the gov-

<sup>1</sup> *Cal. St. P. Col.*, 1689-1692, nos. 2177, 2290, 2295; 1697-1698, nos. 655, 656, 666, 684; *W. and M. Col. Quar.*, vol. xi, pp. 154, 155; Bassett, pp. 37, 38, 54, 27, note.

<sup>2</sup> Bassett, pp. 33, 35.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 33.

<sup>4</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 15, 79; 1705-1721, p. 335; 1721-1734, p. 470.

<sup>5</sup> Instructions to the governors.

ernors disclosed their instructions not only to the Council, but also to the burgesses, and copies were kept by the secretary of the colony and by the clerk of the House of Burgesses, who would permit any colonist to examine them.<sup>1</sup> But when Howard became governor in 1683, it was specified that he should not communicate them to anyone, except when he should think it necessary to disclose some of them to the Council. So dictatorial a governor was quite willing to execute this clause of his instructions, and when he was about to visit England he communicated to the Council only those clauses which were absolutely essential to the administration of the government.<sup>2</sup> The contemporary authority just mentioned stated: "It has been the policy of late governors to keep the Council and all mankind in the dark as to their instructions, and to communicate only now and then one, or a piece of one, to the General Assembly or the Council, as they found it was to their advantage in time of difficulty."<sup>3</sup> Nicholson, for example, in 1699, submitted certain clauses to the House of Burgesses, but the House refused to act favorably upon those regarding the building of the governor's house and the arming of Christian servants. Others submitted were shown to be superfluous, as they were already being observed.<sup>4</sup> It was stated in the Journal of the House of Burgesses in 1702 that the clerk of the Council read the governor's commission to the House and exhibited his instructions, but read only "one of them which nominated the Council."<sup>5</sup> Gooch, whose administration was most successful, did not, in order to secure the

<sup>1</sup> Hartwell, Blair, and Chilton, p. 21.

<sup>2</sup> Bruce, *Instit. Hist. of Va.*, vol. ii, p. 319.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 21.

<sup>4</sup> *Journal House of Burgesses, 1698-1699*, pp. 135-137, 174, 187.

<sup>5</sup> *Ibid.*, 1702-1705, p. 43.



coöperation of the Assembly, depart from the letter of his instructions in regard to communicating them as a whole to that body. In a speech to the burgesses (May 21, 1730) he laid before them two clauses of his instructions, one concerning "the honor of Almighty God, not yet by law sufficiently secured," and the other relating to "bankrupts in England" having estates in Virginia.<sup>1</sup> In 1763, in an address of the burgesses to the governor regarding the complaint of British merchants concerning the paper money of the colony, reference was made to an "instruction of January 31, 1759," which had been communicated to the burgesses.<sup>2</sup> The withholding of these royal orders made it quite difficult for the colonists to know whether the governors were acting in conformity to the policy of the home government. The author just quoted adds: "Thus the check of the instructions was lost, for nobody knew anything of them except some few at Whitehall, and there all was safe so long as no one from Virginia made any complaint."<sup>3</sup> A circular letter from the home government to each of the governors in America, under date of September 2, 1768, stated: "It is his majesty's pleasure that you do not, upon any pretense whatever, communicate either to the Council of Assembly any copies or extracts of such letters as you shall receive from his majesty's principal secretary of state unless you have his majesty's particular directions for so doing."<sup>4</sup> Thus in 1768 the home government still insisted that the governor should not disclose any communication, letters as well as the usual instructions, without special permission.

<sup>1</sup> *Journal House of Burgesses, 1727-1734*, p. 58.

<sup>2</sup> *Ibid.*, 1761-1765, p. 190.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 21.

<sup>4</sup> *C. O.* 5, 69, p. 415.

It was the established policy of the home government, as specified in the royal instructions to the governors from 1682 to the end of the colonial period, that the governor should permit the Council to enjoy freedom of debate and action in all matters of public concern discussed in Council. Although the Council administered to the governor the oath for the due execution of his office, and the oath to see that the special acts of Parliament relating to the colonies were executed, that body did not thereby acquire any power over him. While the governor was, however, expected to consider the Council as simply his advisory board, still in the practical administration of affairs that body gradually assumed much of the executive power. As has been stated in the chapter on the governor, the Council in its executive capacity was consulted by the governor as to practically every official act.<sup>1</sup> The Council considered with the governor petitions of every nature, the reports of all revenue officials, the granting of land, and all matters pertaining to Indian affairs.<sup>2</sup> The appointment of all public officers holding commissions from the governor, the conduct of ministers, controversies between the vestry and the minister, the expenses of the colony, were all discussed and decided on by the governor and the Council.<sup>3</sup> Matters pertaining to intercolonial relations, and practically all official correspondence of the governor, were laid before the Coun-

<sup>1</sup> *Journal Council of Va.*, MS., 1692-1693, p. 134; Executive session, June 10, 1742; Dec. 12, 1722; May 24, 1723; April 15, 1743; Hening, vol. iv, p. 564; *Dinwiddie Papers*, vol. i, p. 255; *Spotswood Letters*, vol. ii, p. 34; *Cal. St. P. Col.*, 1693-1696, no. 2274; *Va. Mag. Hist. and Biog.*, vol. iii, p. 116; vol. xiii, p. 148.

<sup>2</sup> *Journal Council of Va.*, Executive session, Apr. 29, 1693; December 13, 1721; January 11, 1742; *Cal. St. Va. P.*, vol. i, pp. 113, 129.

<sup>3</sup> *Journal Council of Va.*, Executive session, May 4, 11, 1742; 1721-1734, p. 315; *Dinwiddie Papers*, vol. i, p. 385.

cil, and he could not put into execution any article of war or declare martial law without the advice of that body.<sup>1</sup>

There was every reason why the governor should desire to work harmoniously with the Council, as that body was composed of the most influential men of the colony. The governor, therefore, usually endeavored to avoid a controversy with the councillors, as their coöperation was essential to the best interests of the government of the colony. It is to be observed that in the cases of Harvey, Howard, Andros, Nicholson and Spotswood the opposition of the Council was largely the cause of the removal of these governors.<sup>2</sup> The object of the Council in opposing the governors seems to have been the checking of the dictatorial policy of certain governors, and also the securing of more power for themselves, for according to Spotswood the councillors "enjoyed considerable authority and aimed at greater."<sup>3</sup> The Council had gradually secured much of the executive power during the decade immediately preceding Spotswood's administration, for on the death of Nott, in 1706, the government of the colony was administered for about four years by the president of that body. On the removal of Spotswood in 1722, Drysdale became governor. He preferred a peaceful, prosperous administration to one of conflict with the Council, and therefore sought the coöperation of the

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 334, 335; *Cal. St. P. Col.*, 1697-1698, no. 24.

<sup>2</sup> Colonel Robert Quarry to the Lords of Trade, October 15, 1703. (*Sainsbury Papers*, 1625-1705, p. 90). When Harvey was deposed by the Council and forced to return to England, the king and the Privy Council decided that it was "an assumption of regal power" to send the governor to England. Harvey was accordingly ordered to return even if he remained in the colony but a day. He returned but the opposition to him was so strong that he was removed after three years. *Cal. St. P. Col.*, 1574-1660, p. 216.

<sup>3</sup> *Spotswood Letters*, vol. ii, pp. 101, 225, 291.

councillors. When Gooch assumed the duties of the office of governor in 1727, he, as his predecessor, desired so to administer the affairs of the colony as to contribute to its prosperity and peace. There were no attempts on the part of the Council to usurp any of the functions of the governor, but during the twenty-two years of his successful administration that body was without question an important factor in the government. In 1759 Fauquier, being reprimanded by the Board of Trade for signing, contrary to his instructions, a certain act of the Assembly, gave as his excuse that he had signed the law by the advice of the Council, contrary to his own judgment. The Board of Trade, replying, stated that the opinion of the Council could not relieve the governor of his obligation, and if it could, then the interests of the colony would depend solely on the uncertain inclination of the councillors. Notwithstanding this statement of the Board of Trade, which indicates their opinion of the administrative ability of the Council, it seems that whenever the governor permitted them to have a large share in the administration of affairs, and when the senior councillor served as chief executive in the absence or on the death of the governor, the colony was usually quiet and prosperous.

From what has been stated in this and the preceding chapter as to the relation of the governor and the Council, it will be seen that from 1624 to 1652 the Council was increasing its power. During the Protectorate the Council was subordinate to the House of Burgesses. From the Restoration in 1660 to about 1700 the dictatorial governors endeavored to check the encroachment of the Council upon the functions of the executive, but failed. In the eighteenth century that body wielded much power and was able to interfere very seriously with any governor who opposed it. From about 1700, the general tendency of the Council was

to combine with the burgesses against an objectionable governor by refusing to make appropriations, and to pass acts for the execution of his policy of administration.<sup>1</sup> It was not strange that the Council should have gradually acquired more power and that their support was absolutely essential to the success of the governor. They were the most influential men in the colony, since they filled the most important offices and held, on account of their family relationship and wealth, the highest social position.

The Council as a legislative body was not the result of custom or development, but was given this power by the London Company in 1618. The first royal confirmation of this power was in 1628. The constitution of the General Assembly was from the first expressly stated. The governor and Council were to compose one part, while the other was to be composed of the representatives elected by popular vote. It is quite reasonable to suppose that the Council exercised some degree of influence over the burgesses from the very establishment of the legislature. The Council certainly had the power of concurrence, amendment, and rejection. This seemed to be the limit of its powers, as no legislation originated in the upper house. Still the Council endeavored after the Restoration to dominate the House, and did influence to a large extent the course of legislation. The British government, according to the first instructions to Culpeper, evidently intended to deprive the House of all real power in legislation. The governor and Council were to suggest to the British government measures which, after amendment, were to be returned to be adopted by the House. Culpeper soon realized that this plan could not be effected,

<sup>1</sup> The most noticeable exception to this was the action of the Council in approving the pistole fee, demanded by Dinwiddie, when the burgesses opposed it very strenuously. *Dinwiddie Papers*, vol. i, p. 379.



and so informed the home government.<sup>1</sup> The General Assembly was called, prorogued, and dissolved by the governor on the advice of the Council, and the assent of the governor and the Council was essential before any measure passed by the House of Burgesses became a law.<sup>2</sup> The clerk of the burgesses after 1688 was appointed by the governor with the advice of the Council.<sup>3</sup> In certain administrative measures concurrence of the House with the Council was necessary, especially when appropriations were to be made for the performance of some public service.<sup>4</sup> The House, by royal authority, also had power to examine accounts of the expenditures of the funds appropriated by that body for the use of the government.<sup>5</sup> While it was not always necessary, still the House usually joined with the Council in sending addresses to the king.<sup>6</sup> The petitions setting forth certain grievances of the colonists were jointly considered by the Council and the House.<sup>7</sup> In considering the relation of the Council to the House, it is of interest to note that the governor appointed at the beginning of each session of the Assembly two councillors to administer the oaths of allegiance and fidelity to the members of the House.<sup>8</sup>

<sup>1</sup> Hening, vol. ii, p. 204; *McDonald Papers*, vol. v, p. 302; vol. vi, p. 15; *Journal House of Burgesses, 1659/60-1693*, pref., p. 29.

<sup>2</sup> *Journal Council of Va.*, Executive session, June 7, 1722; June 20, 1723; Beverley, p. 188; Hartwell, Blair and Chilton, p. 32.

<sup>3</sup> *Cal. St. P. Col., 1689-1692*, no. 1403; *Journal Council of Va., MS., 1692-1693*, p. 142.

<sup>4</sup> *Cal. Va. St. P.*, vol. i, pp. 18, 19, 126; *Va. Mag. Hist. and Biog.*, vol. iv, p. 20.

<sup>5</sup> *Cal. Va. St. P.*, vol. i, p. 73; Hartwell, Blair and Chilton, p. 32; *Sainsbury Papers, 1706-1714*, p. 68.

<sup>6</sup> *Cal. St. P. Col., 1681-1685*, no. 186; *Va. Hist. Reg.*, vol. iv, p. 72.

<sup>7</sup> *Cal. Va. St. P.*, vol. i, pp. 66, 75.

<sup>8</sup> *Journal House of Burgesses, 1659/60-1693*, p. 119; 1695-1696, p. 4; 1702-1705, p. 43; 1705-1706, p. 131; 1766-1769, p. 225.

In regard to legislation, it seems that the Council was undoubtedly expected to perform a service quite similar to that rendered by the House of Lords in the British Parliament. As the House of Lords had the power to prevent the enactment of any measure passed by the House of Commons, so the Council was to serve as a check upon the more popular House of Burgesses. The wealth, political influence, and social position of the councillors, and their close association with the governor in many ways, would, in the opinion of the home government, contribute towards their efficiency as a check upon the popular spirit of the lower house. As has been stated elsewhere, the Council, near the end of the seventeenth century, and especially in the eighteenth century, so increased its power as to interfere very seriously with certain governors. The House of Burgesses in the eighteenth century, however, gained even more power than the Council. Since all legislation, and especially all appropriations, originated in the House, both the governor and the Council were dependent upon that body. The interest of the Council was, in the eighteenth century, usually with the House rather than with the governor. This was, perhaps, due to the fact that the councillors were natives of the colony and held all their possessions there, and were, therefore, much interested in legislation from a provincial point of view. It is also true that after about 1700 councillors were not permitted to monopolize some of the most lucrative offices, and especially those of naval officers and collectors. Since they could no longer secure these positions by courting the favor of the governor, there was no reason why they should not ally themselves with the House. They did not, however, refuse to support certain governors, who were influenced by conditions in the colony in executing their instructions.

The Council sitting in its judicial capacity constituted the

General Court, which was the highest tribunal of the colony. This court was presided over by the governor, who with the Council was enabled to wield a very great influence in the private as well as the public affairs of the colonists. In a later chapter dealing especially with the judicial system the relation of the Council to the judicial department of the government will be more fully treated.

It was the policy of the British government to perpetuate in Virginia the established church of England. With the exception of the Protectorate and a brief period under James II, the British government made a "determined and persistent attempt" to enforce the doctrines and ceremonies of the Episcopal Church.<sup>1</sup> Not only through churches, schools and the college, but also with the assistance of the royal officials of the colony the home government sought to accomplish this end. The governor, as the highest representative of royal authority in the colony, was instructed to make the Episcopal Church supreme. There were, however, some in the colony who, contrary to the dictates of conscience, were thus compelled to support a church of which they were not communicants. The dissenters, refusing to attend the services of the Episcopal Church or to have their children baptized in that church, were fined for these offences.<sup>2</sup> Although the British government endeavored to enforce conformity to the Church of England, still the acts of Assembly indicate that there was a recognition

<sup>1</sup> H. J. Eckenrode, *The Separation of Church and State in Virginia*, pp. 5, 19; Bruce, *Instit. Hist. of Va.*, vol. i, p. 215.

<sup>2</sup> McIlwaine, pp. 8-14. The dissenting spirit was chiefly represented by the Quakers, the Huguenots, the Presbyterians, the Baptists, and the Papists.

<sup>3</sup> *Lower Norfolk County, Virginia Antiquary*, vol. v, pp. 123, 124; *Warwick County Court Minutes*, p. 22; *Cal. Va. St. P.*, vol. i, p. 9; Hening, vol. ii, p. 165; *McDonald Papers*, vol. vi, p. 132.

of the futility of the attempt. The penalty of five shillings for non-attendance once in two months on the services of the Episcopal Church continued in force, but was modified so as not to include Protestant dissenters who were exempted by the Toleration Act of William and Mary, provided they attended at least once in two months some religious meeting.<sup>1</sup> This was, therefore, a very great concession to the dissenters. The decline of the allegiance of the colonists to the Church of England was so serious as to necessitate an act of Assembly (1759) to prevent vestrymen who had joined a dissenting congregation from continuing to serve as vestrymen.<sup>2</sup> While dissenters were thus not compelled after about 1700 to attend the Episcopal Church, still they were not exempted from the parish dues.<sup>3</sup> It was not until after the Revolution had really begun that the act of Assembly (1776) was passed which granted exemption to "great numbers of dissenters" who had been "taxed" for the support of the "church established by law."<sup>4</sup>

There was throughout the colonial period a suspicion in regard to Catholics, and in the instructions to the governors, in the acts of Assembly, and in the actual administration, every precaution was taken to avoid giving them any part in the government. The governor, the Council, the members of the House of Burgesses, and all holding offices of trust and responsibility were required to take an oath to conform to this policy of the home government. In his in-

<sup>1</sup> Hening, vol. iii, pp. 171, 360; vol. v, p. 226.

<sup>2</sup> *Ibid.*, vol. vii, p. 302.

<sup>3</sup> German Lutherans were however for ten years exempted until they learned the language and customs of the colony. This privilege was granted by the Assembly upon royal instruction. *C. O.* 5, 196, p. 110.

<sup>4</sup> Hening, vol. ix, p. 164.

structions the governor was directed to permit liberty of conscience to all except Papists. From about 1705, a "popish recusant" was by act of Assembly deemed to be "incapable in law to be a witness in any case whatsoever."<sup>1</sup> That this was justifiable seems to be shown by a proclamation issued by Gooch to all sheriffs and magistrates to seize and bring to trial several Roman Catholic priests who had come from Maryland into Virginia and were endeavoring to turn the people from their loyalty to the king. In 1756 an act of Assembly was passed for disarming Papists who refused to take the oaths of allegiance to the government, and justices of the peace were empowered to search the house of every one refusing to take these oaths in order to seize any arms that might be in their possession.<sup>2</sup>

The governor and the Council constituted a kind of ecclesiastical court, to which all complaints against ministers or the vestries were referred. Some petitions and complaints regarding ecclesiastical matters, such as the division of a parish and the salary of ministers, were referred by the governor and Council to the House of Burgesses. After about 1700 the House encroached upon the power of the governor and Council in such matters.<sup>3</sup> The vestry was composed of twelve of the most influential men in the parish, elected by the parishioners. Vacancies in the vestry were filled by the appointees of the vestrymen, thus making the vestry a self-perpetuating body.<sup>4</sup> Two vestrymen were annually chosen by the vestry to serve as churchwardens. The churchwardens were the executive officers of the par-

<sup>1</sup> Hening, vol. iii, p. 298; vol. v, p. 480; vol. vi, p. 339.

<sup>2</sup> *Ibid.*, vol. vii, p. 35.

<sup>3</sup> *Journal House of Burgesses, 1659/60-1693*, pp. 150, 350; *1700-1702*, p. 252; *Fulham MSS., Virginia*, 1st box, nos. 74, 98; 2nd box, nos. 125, 127.

<sup>4</sup> Jones, p. 66; Beverley, p. 211.



ish and carried out the orders and instructions of the vestry, and thus had general supervision of the affairs of the parish.<sup>1</sup> Among other services they were expected to collect the parish levy, but this was usually done by the sheriff.<sup>2</sup> The royal power extended into the actual church system of the colony through the governor and Council in so far as they affected it. The sheriff, who as an appointee of the governor and representing royal authority, came into close and personal relations with the parish and the local church officials in collecting the parish levy.

A brief recapitulation of the powers and the influence of the Council should be given in order to determine the efficiency of this body both from the British and from the provincial point of view. The councillors appointed under royal commission were expected to prove themselves an efficient advisory board to the governor. They were familiar with conditions in the colony, while the governor was not, until after residing there for some time, and could therefore render him valuable assistance. By about 1685 the relation of the Council to the governor was more clearly defined, and the royal instructions to the governor showed that it was the policy of the British government that he should consider the Council simply his advisory board. The Council was in theory the governor's advisory board, yet that body contested with him the executive authority in the colony. Though the power of the governor to suspend councillors was emphasized in the royal instructions, still it seems that after about 1700 there was no attempt on the part of the governor to exercise it, and very few cases before that date. Until near the close of the seventeenth century the Council usually coöperated with the governor, but beginning with

<sup>1</sup> *Vestry Book of Henrico Parish*, pp. 16-19, 93, 96, 108.

<sup>2</sup> *Ibid.*, p. 77; *Cal. Va. St. P.*, vol. i, pp. 97, 216.

the removal of Howard, which was the result of the opposition of the Council, this body wielded much power in the colony until the Revolution. In the eighteenth century the interests of the Council were usually with the House, especially in the case of a dictatorial governor. The House was, however, gradually encroaching upon both the governor and the Council. The home government was not, however, ignorant of the position of the Council in the actual administration of affairs, as shown by the correspondence between the governor and the Board of Trade. The monopoly of the most important and lucrative offices by councillors was certainly well known, for their commissions not only as councillors but also as officials in these positions were issued in England. Notwithstanding the complaints of the Council against certain governors, and the removal of some of them on account of controversies with that body, there seems to have been no desire on the part of the British government to discontinue the Council. The willingness of the councillors to work harmoniously with a governor who was sincerely interested in the prosperity of the colony, and not anxious to dispute the executive power with them, must have impressed the Board of Trade.

The royal commissions, the dignity of the office of councillor with all of its emoluments and privileges, the close association with the governor, and the power shared with him in the administration of the government appealed to those who considered themselves the aristocracy of the colony. There were occasionally objections to specific acts of the Council, but no general opposition to that body seems to have been raised by the colonists. Although the members of the Council held commissions under the royal sign manual, and the senior councillor filled the governorship between the death or removal of the governor and the appointment of his successor, still their interests were with

the colony rather than with the home government. The plan of the British government regarding the position of the Council in the administration of the government of the colony evidently failed. The Council, therefore, gradually became more provincial, even under those governors in the eighteenth century whose administrations were free from controversy.

The governor presided over the Council. If for any reason he could serve, the senior member of the Council filled the governorship. Such occasions arose on account of the absence of the governor while negotiating with a neighboring colony, or on a visit to England, or in the interim between his death and the appointment of his successor.<sup>1</sup> In the early part of the colonial period the governor appointed one of the councillors to serve in this capacity even when leaving the seat of government for only a brief time. Later a warrant under the royal sign manual authorized one of the Council to act as president of that body and to execute the office of governor,<sup>2</sup> but this was only the confirmation of a well-established custom, for eligibility to this position was by 1676 determined by seniority in the Council.<sup>3</sup> The home government kept in constant communication with the president of the Council, but no formal royal instructions, as received by the governor on his appointment, were sent to him, for he was expected to execute those of the governor whose office was for any reason being filled by him.

From 1624 to 1775 there were twenty instances of the

<sup>1</sup> *Cal. St. P. Col.*, 1693-1696, no. 637; Hartwell, Blair, and Chilton, p. 32; W. G. and M. N. Stanard, *The Colonial Virginia Register*, pp. 18, 19.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 190.

<sup>3</sup> *Cal. St. P. Col.*, 1675-1676, no. 833; 1685-1688, no. 1574; 1689-1692, nos. 40, 148.

exercise of the chief executive power of the colony by members of the Council. Eleven of these were between 1624 and 1700, and the other nine after 1700. Their terms of service varied from a few months to three years and ten months.<sup>1</sup> The position of senior councillor was sought by the members of the Council, not only for the opportunity which it afforded to serve as governor, but also for the influence which pertained thereto. During the personal administration of the governor the position of senior councillor was a "place of much dignity, but of little power,"<sup>2</sup> as it was only in the absence of the governor that the senior councillor performed executive functions. It was quite natural that the question of rank in the Council should be given much attention, and one is not surprised to find that "certain members called attention to a mistake in the assignment of seniority in the Council."<sup>3</sup> The British government sought to impose certain constitutional limitations upon the Council when that body, through the senior councillor, administered the government. It was specified in the instructions to the governor that the president of the Council should not have passed any act of Assembly, but what was immediately necessary for the peace and welfare of the colony, without special order from the home government. It was further specified in the instructions after about 1725 that he was not to dissolve the Assembly in session at the time of his entering upon his duties, nor remove nor suspend any councillor or any officer of the colony, without the advice and consent of at least seven members of the Council. Should any of these changes be necessary, he was to transmit immediately his reasons for doing so, approved by the Council, to the home government.

<sup>1</sup> Stanard, pp. 13-20; *Va. Mag. Hist. and Biog.*, vol. ii, pp. 125-129.

<sup>2</sup> Bassett, p. 86.

<sup>3</sup> *Minutes of Council of Virginia*, February 27, 1689.

The councillor who served as governor received, in addition to his regular salary as councillor, £500 a year, but the other members of the Council who assisted him did not receive special compensation. Early in the eighteenth century the president received half of the salary and half of the perquisites of the governor.<sup>1</sup> This salary, which was determined by the lords of the treasury and mentioned in the instructions to the governor, was paid to the president out of the two shillings per hogshead revenue. In the period 1704-1768, when there was a governor-in-chief resident in England, this was included in the usual salary of the governor, which salary, after deducting his own, the president forwarded to him.<sup>2</sup> Under Dinwiddie (1752-1758), it seems that he received special compensation according to an agreement between the governor-in-chief and the lieutenant-governor, even when not performing the duties of the governorship. Dinwiddie stated: "Lord Albemarle and myself are on an agreement to pay him so much yearly."<sup>3</sup>

The presidents of the Council evidently performed the duties devolving upon them in a very creditable manner. Culpeper paid a high tribute to the efficiency of the Council when making his report on conditions in the colony in 1683: "I thank God," said he, "I did not leave my government in the least distress, but, on the contrary, in full quiet and security, not in the hands of an easy lieutenant-governor, but of a prudent, able, and vigorous Council, for the conduct of almost every individual member whereof I dare to be responsible."<sup>4</sup> Howard, in a letter to the Earl of Sun-

<sup>1</sup> Instructions to the governors; *Sainsbury Papers*, 1720-1730, p. 281; *Fulham MSS., Virginia*, 1st box, no. 93.

<sup>2</sup> *Cal. St. P. Treas.*, 1708-1714, p. 8; *Journal Council of Va.*, MS., 1721-1734, p. 229.

<sup>3</sup> *Dinwiddie Papers*, vol. i, p. 484.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 237.



derland, under date of December 21, 1687, expressed the desire that the Council might assume control of the government during his absence. "I should prefer," said he, "to see it vested in the Council with the senior councillor to preside, rather than in any specially commissioned deputy governor."<sup>1</sup> The administration of the presidents of the Council were marked by quietude and prosperity.<sup>2</sup> Colonel Robert Quarry, the surveyor-general of the customs, in his report (December 2, 1709) to the Board of Trade, stated: "All things are very quiet in Virginia, and so will continue until the arrival of a new governor; no Assembly has sat since the death of Colonel Nott."<sup>3</sup> Edmund Jennings served as governor from the death of Nott, August 23, 1706, to the arrival of Spotswood, June 23, 1710. This report of the quietude of the colony under the president was made to the home government by a British official who had no reason to be biased in favor of Virginia. It is worthy of note that the colonists were so well satisfied with this president who had served them for more than three years that they did not consider it necessary to call an Assembly. The people of the colony evidently approved of the administrations of the presidents and supported them, but it is not to be inferred that this indicated a general dislike of royal governors, for in the case of those who really sought the interest of the colony there was the most hearty support on the part of the colonists.

The office of commissary was an ecclesiastical appointment within the power of the Bishop of London. In 1689, Rev. James Blair was commissioned as commissary under

<sup>1</sup> *Cal. St. P. Col.*, 1685-1688, no. 1574.

<sup>2</sup> *Ibid.*, 1681-1685, no. 1149; *Va. Hist. Reg.*, vol. iv, p. 6; *Sainsbury Papers*, 1706-1714, p. 64.

<sup>3</sup> *N. Y. Col. Docs.*, vol. v, p. 114.

the episcopal seal of the Bishop of London, and served in this capacity for fifty-four years.<sup>1</sup> The duties of the office included the general supervision of the clergy, and the presidency of William and Mary College. In regard to his powers over the clergy, it was stated by Rev. Hugh Jones, writing in 1724, that they were "few, limited and disputed," for he was but a "shadow of a bishop," having no authority "to ordain, confirm nor depose" a minister.<sup>2</sup> It was necessary for those in the colony desiring to become ministers to secure letters from the governor commending them to the bishop for ordination. This was not, however, usually done by the governor without conferring with the commissary. While the commissary did not have the power of a bishop, still he was undoubtedly the deputy of the bishop and did have general supervision of the clergy, as indicated by the petitions made to him by ministers and by his correspondence with the bishop and that of the governor with the bishop. He was expected to call the clergy by the bishop's order, and to preside over the meeting. He held a court for the punishment of the immoralities of the clergy, appeal from which lay to the "delegates appointed by his majesty's commission in England."<sup>3</sup> But the inefficiency of this tribunal led the minister just quoted to state that there was "no ecclesiastical court" in the colony, and that the people hated the "very name of the bishop's court."<sup>4</sup> Notwithstanding the above statements quoted from Jones,

<sup>1</sup> W. S. Perry, *Historical Collections Relating to the American Colonial Church*, vol. i, p. 130; *Fulham MSS., Va.*, 1st box, nos. 9, 121, 180; Hartwell, Blair, and Chilton, p. 35; Beverley, p. 197.

<sup>2</sup> Jones, p. 66; *Fulham MSS., Virginia*, 1st box, no. 74, 98, 106; 2nd box, nos. 111, 155.

<sup>3</sup> *Dinwiddie Papers*, vol. i, p. 384; *Va. Mag. Hist. and Biog.*, vol. iii, p. 116.

<sup>4</sup> Jones, p. 97.

the commissary was undoubtedly a man of much influence in the colony. As president of William and Mary College he had a representative in the House of Burgesses and could, to some extent, influence legislation.<sup>1</sup>

The power and influence of the commissary was soon greatly increased by his appointment in 1693 to the Council.<sup>2</sup> Thus his commission as councillor, since it was granted by royal authority, made him a royal appointee.<sup>3</sup> The power of the governor over the commissary was limited. He might suspend him, but since the latter was a royal appointee, appeal was allowed to the king. The controversies between Commissary Blair, and Andros, Nicholson, and Spotswood, in which the commissary was successful in retaining his office and seat in the Council, showed the limited power and jurisdiction of the governor.<sup>4</sup> The governor considered the commissary an "outside official," who sought to deprive him of the supervision of church affairs. This, no doubt, accounted for the conflicts between him and certain governors.

There were no perquisites connected with the office of commissary, and the annual royal appropriation of £100 out of the quit-rents was not at first an established salary.<sup>5</sup> By 1698, however, the governor was instructed to issue the order for the payment of this salary out of the quit-rents "without further warrant" from the lords of the treas-

<sup>1</sup> *Journal House of Burgesses, 1695-1696*, p. 6; Hartwell, Blair, and Chilton, p. 35; Beverley, p. 98.

<sup>2</sup> Hartwell, Blair and Chilton, p. 35.

<sup>3</sup> Jones, p. 99; *Fulham MSS., Virginia*, 1st box, nos. 49, 104; C. O. 324, 51, p. 10.

<sup>4</sup> Hartwell, Blair, and Chilton, p. 36; *Spotswood Letters*, vol. ii, p. 284; *Va. Mag. Hist. and Biog.*, vol. vii, pp. 153-172, 275-286; vol. viii, pp. 46-64, 126-146.

<sup>5</sup> Hartwell, Blair, and Chilton, p. 67.

ury.<sup>1</sup> Any arrears in regard to this salary were in consequence of this instruction reported to the Council by the commissary, and the necessary order issued for the payment out of the revenue of the quit-rents.<sup>2</sup> In addition to this salary, he received the regular salary of a councillor and £150, later increased to £200, a year for his services as president of William and Mary College.<sup>3</sup>

The solicitor of Virginia affairs was the agent of the colony in London. The earliest example of the appointment of such an officer was in 1624, when the charter of the colony was to be revoked.<sup>4</sup> From 1624 to about 1680 the General Assembly, as occasion demanded, had an agent, but after 1680 the governor and Council only were regularly represented in England by an agent until 1759, when the House of Burgesses also was regularly represented.<sup>5</sup> The agent of the governor and Council sometimes not only served Virginia but also neighboring colonies.<sup>6</sup> He was

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, p. 24; 1705-1721, p. 11; *Cal. St. P. Treas.*, 1697-1702, p. 172; 1714-1719, pp. 19, 76; *Cal. St. P. Treas. Books and Papers*, 1742-1745, p. 306; *Journal Board of Trade*, vol. xi, p. 203; vol. xxvi, p. 305; *British Museum King's MSS.*, no. 205, p. 509.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 4.

<sup>3</sup> *Journal Board of Trade*, vol. xxxvi, p. 368; Jones, p. 27; *Fulham MSS., Virginia*, 1st box, no. 188. Commissary James Blair, who died in 1743, left £10,500, of which £500 was willed to the college and the remainder to his nephew and his nephew's children. (*Fulham MSS., Virginia*, 1st box, no. 136.)

<sup>4</sup> Hening, vol. i, p. 127.

<sup>5</sup> *Cal. St. P. Col.*, 1701, nos. 902, 1169; 1702, no. 497; *Journal House of Burgesses*, 1659/60-1693, p. 61; 1727-1734, pp. 49, 58; *Dinwiddie Papers*, vol. i, pp. 37, note, 408.

<sup>6</sup> James Abercromby served Virginia and was for some time agent for North Carolina, and the private agent of Governor Glenn of South Carolina, *Dinwiddie Papers*, vol. i, p. 37, note. Micajah Perry was agent of Virginia and Maryland in 1697. *Cal. St. P. Col.*, 1696-1697, no. 1157.

appointed by the governor with the advice of the Council, and was considered even by the governor really the agent of the Council.<sup>1</sup> On one occasion the governor-in-chief, the Earl of Orkney, and the lieutenant-governor agreed to permit the Council to select a person other than their own choice for this position.<sup>2</sup> In making the request and in sending a letter of thanks for the appointment to this office, the agent addressed it to the Council and not to the governor.<sup>3</sup> The agent of the Council was really the agent of the colony, for although the House did occasionally send a special agent, it did not employ one regularly in London until 1759. In some cases, when there was no controversy between the Council and the House, the agent sent on a special mission of great importance to the colony was the recognized representative of the governor, the Council, and the House of Burgesses.<sup>4</sup>

Near the close of the colonial period (1759), when the House of Burgesses wielded much power in the colony, an agent was appointed by that body. He was instructed from time to time by a "committee of correspondence," constituted by an act of Assembly, and composed of four councillors and eight burgesses, including the speaker, to whom the Assembly committed such matters as were to be referred

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 4; *Cal. St. P. Col.*, 1697-1698, no. 924; *Dinwiddie Papers*, vol. i, pp. 210, 237, 248.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 51.

<sup>3</sup> *Ibid.*, 1705-1721, app., p. 12; *C. O.* 324, 60, p. 55.

<sup>4</sup> Thomas Ludwell, secretary of Virginia, Colonel Francis Morryson, and General Robert Smith were sent in 1674 by the governor, Council, and burgesses to have the grant of all Virginia to Culpeper revoked. (Hening, vol. ii, p. 518.) William Byrd was sent in 1696 by the Assembly as special agent to present an address to the king. He was again sent in 1701 as the special agent of the Council and the House to present a protest against furnishing military assistance to New York. (*Journal House of Burgesses, 1700-1702*, pp. 303, 313.)



to the agent.<sup>1</sup> The reports of the agent were made to this committee, and transmitted by it to the Assembly. The committee had the power to remove the agent, and to appoint his successor, subject to the approval of the governor, until the next Assembly.<sup>2</sup> The controversy with Dinwiddie concerning the pistole fee had convinced the House of Burgesses of the necessity of having their own agent in England. Their effort to secure such a representative failed during the administration of that governor, but by 1759, under Fauquier, they were permitted to have one permanently. The agent of the House did not, of course, supersede the agent of the governor and Council, but each served in his respective capacity. Edward Montague, who was appointed in 1759, and served until the Revolution, was instructed to coöperate with James Abercromby, who had been serving the governor and Council since 1753.<sup>3</sup> Abercromby continued to negotiate the business relating to the royal revenues, and all matters of the colony except those over which the House of Burgesses had control or in which they were specially interested. It seems that these agents, representing to some extent conflicting interests, worked together harmoniously, although for a time there was a dispute as to Montague's authority.<sup>4</sup> Montague's services were mostly devoted to presenting the addresses of the House of Burgesses to the king, obtaining the royal assent to acts of Assembly, negotiating matters of trade and finance, and to

<sup>1</sup> There were usually about eight or ten of the twelve members of this committee present. Hening, vol. vii, p. 276; *Va. Mag. Hist. and Biog.*, vol. ix, pp. 353-360, 364-368.

<sup>2</sup> Hening, vol. vii, p. 276; *Va. Mag. Hist. and Biog.*, vol. ix, pp. 353-360, 364-368; vol. x, pp. 337-356.

<sup>3</sup> *Journal House of Burgesses, 1758-1761*, p. 288; *Va. Mag. Hist. and Biog.*, vol. xi, p. 12; *Dinwiddie Papers*, vol. i, pp. 37-38, note.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. xii, pp. 5, 167.

the interest of the people in general in their relation to the policy of the British government.<sup>1</sup> The agent of the Council represented the interests of the colony in general, and especially the governor and Council before the Board of Trade, the commissioners of the customs, the lords of the treasury, the lords of the admiralty, the auditor-general, and other officials of the British government.<sup>2</sup> He was expected to be conversant on conditons in the colony, and therefore competent to explain the enactment of certain laws.<sup>3</sup> He was of valuable service in negotiating matters pertaining to large land grants, military supplies, import and export duties, the appointment of officials, and many such matters concerning the colony, which were referred to the home government.<sup>4</sup> He forwarded to the governor commissions and all other papers passed on by the Board of Trade relating to the colony,<sup>5</sup> and remitted the money appropriated by Parliament for reimbursing the colony for the expenses of the French and Indian War,<sup>6</sup> and acted with the agents of other colonies on special matters of intercolonial concern.<sup>7</sup> The duties of the agent of the gov-

<sup>1</sup> *Journal House of Burgesses, 1727-1734*, pp. 49, 58; 1766-1769, p. 215; 1770-1772, intro., p. 17.

<sup>2</sup> *Journal Board of Trade*, vol. xlvi, p. 96; *Dinwiddie Papers*, vol. i, p. 493.

<sup>3</sup> *Cal. St. P. Treas. Books and Papers, 1729-1730*, no. 66; *Journal Council of Va.*, MS., 1705-1721, app. p. 21; 1721-1734, p. 395; *Cal. St. P. Col.*, 1661-1668, p. 975.

<sup>4</sup> *Cal. St. P. Col.*, 1661-1668, nos. 1037, 1618; 1697-1698, no. 259; *Journal Council of Va.*, MS., 1705-1721, p. 398; 1721-1734, pp. 161, 255; 1772-1773, p. 36; *Sainsbury Papers, 1691-1697*, p. 232; 1606-1740, p. 159; 1706-1714, pp. 29, 202.

<sup>5</sup> *Journal Board of Trade*, vol. xlvi, p. 96; *Dinwiddie Papers*, vol. i, p. 493.

<sup>6</sup> *Dinwiddie Papers*, vol. i, intro., p. 16.

<sup>7</sup> *Journal Board of Trade*, vol. xxxix, p. 123; vol. xxx, p. 292; vol. lxxv, p. 6; vol. xxxi, p. 128; *Va. Mag. Hist. and Biog.*, vol. xii, pp. 5, 167.

ernor and Council thus necessitated his negotiating quite frequently the affairs of the colony with British officials, and for some reason Peter Leheup, who served in this capacity, so provoked the "frowns of the ministry" as to render himself of no further service to the colony, and was soon superseded.<sup>1</sup>

The colony bore the expenses connected with the negotiation of all matters relating to its interests. The earliest agent in 1624 received four pounds of tobacco from every tithable in the colony as his compensation. There was at certain times a fund deposited in London for this purpose, and the colony maintained that it had the right to create such a fund and to direct the disposal thereof.<sup>2</sup> When Ludwell, Morryson, and Smith were sent in 1674 to England to have the grant of the whole of the colony, which had been made to Culpeper, revoked, the Assembly laid a special tax of fifty pounds of tobacco on every tithable, and also required of every one bringing suit in the General Court seventy pounds of tobacco, and fifty pounds in the county courts, and in addition appropriated a part of the revenue of the two shillings per hogshead for the expenses of these negotiations.<sup>3</sup> Each of these three agents was paid £150. The right of the colony to dispose of the "very considerable sum of money" raised during the years 1674 and 1675 for this purpose was questioned, and an order was issued forbidding the agents to use any more of that money without a royal warrant authorizing them to do so.<sup>4</sup> This was,

<sup>1</sup> *Dinwiddie Papers*, vol. i, p. 210.

<sup>2</sup> "Ordered, That £100 be transmitted to the agent in England for his present supply." This was in 1673. *Journal House of Burgesses, 1659/60-1693*, p. 61.

<sup>3</sup> Hening, vol. ii, p. 313; *Journal House of Burgesses, 1659/60-1693*, p. 62.

<sup>4</sup> Hening, vol. ii, p. 430.

of course, an unusual case involving a matter of much importance to the king. There was usually no interference on the part of the home government in regard to the actions of the agents and the use of funds for their expenses. After 1680, when there was a regular agent of the governor and Council, he on some occasions obtained the necessary compensation from a London merchant,<sup>1</sup> upon instructions of the receiver-general by order of the Council,<sup>2</sup> but usually furnished the receiver-general with an account of his probable expenditures, who, upon order of the Council, advanced the amount to him out of the revenue of two shillings per hogshead.<sup>3</sup> The agent of the governor and Council received at first an annual salary of £100, paid out of the revenue of two shillings per hogshead, on the warrant of the governor upon the receiver-general, just as the resident officers of the colony. In 1716 the governor received a special royal order to pay him £200 a year out of the quit rents in addition to his then regular salary of £100 out of the revenue of two shillings per hogshead. When he performed some special service for the House of Burgesses with the approval of the governor and Council, he was compensated by the House out of the funds in the hands of the treasurer.<sup>4</sup> This was, of course, when the House had no agent. It was estimated in 1755 that the total expense of keeping the regular agent of the governor and Council was about £2000 a year. This included the salary of the agent, commissions

<sup>1</sup> Micajah Perry frequently made such loans.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 117.

<sup>3</sup> *Ibid.*, 1721-1734, pp. 90, 161, 256, 352.

<sup>4</sup> Blathwayt, *Virginia Papers*, MS.; *Journal Council of Va.*, MS., 1698-1703, p. 43; 1705-1721, pp. 15, 43, 61, 266, 273; 1721-1734, p. 349; *Journal Board of Trade*, vol. xxvi, p. 305; *British Museum, King's MSS.*, no. 206, p. 249; *Journal House of Burgesses, 1752-1755*, p. 96; *Dinwiddie Papers*, vol. i, pp. 237, 390, 408; *Va. Mag. Hist. and Biog.*, vol. iii, pp. 122, 375.

and "gratuities," which were presents to the clerks and under officials in the several public offices given to induce them to assist the agent in advancing the interests of the colony. These were charged as incidental expenses in the account of the agent.<sup>1</sup> The agent of the House of Burgesses was appropriated by that body £500 as his annual salary, to be paid out of the public moneys by the treasurer of the colony.<sup>2</sup>

The agents of the colony were usually men whose permanent residence was in England. A notable exception to this was Colonel William Byrd, who served in this capacity for six years without forfeiting his seat in the Council.<sup>2</sup> So far as the home government was concerned, the position of the colonial agent was unofficial. He was, however, recognized as the duly accredited representative of his colony, and was permitted to present his credentials to the Board of Trade, the commissioners of the customs, the lords of the admiralty, the auditor-general, and the principal secretary of state, and to negotiate with them the matters regarding the colony.<sup>4</sup> There is an entry in the records of the treasury which shows that the agent on some occasions handled rather large amounts of the quit-rents. Peter Leheup, who was agent in 1763, was granted "£6000 out of Virginia quit-rents for his majesty's special service without accompt."<sup>5</sup> There is also in the Journal of the Council of Virginia a statement that the receiver-general, by a warrant under the sign manual of the king on April

<sup>1</sup> *Dinwiddie Papers*, vol. i, p. 138; vol. ii, p. 38, note.

<sup>2</sup> Hening, vol. vii, p. 276; *Va. Mag. Hist. and Biog.*, vol. xi, p. 25.

<sup>3</sup> Bassett, pp. 77, 78; *Cal. St. P. Col.*, 1697-1698, no. 951.

<sup>4</sup> *Journal House of Burgesses*, 1766-1769, p. 215; 1770-1772, intro., p. 17; *Spotswood Letters*, vol. ii, pp. 28, 43, 78.

<sup>5</sup> *Cal. St. P. Treas. Books and Papers*, 1735-1738, p. 265.



18, 1726, paid out of the revenue of quit-rents to Peter Leheup £5512.<sup>1</sup>

The opposition to the royal government in the colony was naturally expressed in the popular house of the Assembly. This was particularly true in the Dinwiddie administration, when the burgesses remonstrated against the exercise of the royal prerogative by Dinwiddie in reference to the fee charged for affixing the seal to land grants. In 1754 the burgesses sent Peyton Randolph, then the attorney-general of Virginia, to England as its agent with a petition to the king for relief from that fee.<sup>2</sup> The burgesses voted him £2500 for this mission and £300 for life should he be removed from office. Regarding the action of the House in this matter, Dinwiddie complained that it was a "notorious encroachment on the prerogative of the crown, and immediately contrary to my instructions."<sup>3</sup> While the burgesses were not altogether successful in their petition regarding the fee, they were, however, successful in their effort to keep Peyton Randolph in the office of attorney-general. Dinwiddie, to whom Randolph had become very objectionable, in a letter to the Board of Trade lamented that he was compelled, on account of an order of that Board, to reinstate Randolph as attorney-general.<sup>4</sup> Five years after this controversy the House had a permanent agent. It will thus be seen that through the sending of an agent to represent their interests the burgesses showed their power in the administration of the government of the colony, and also indicated the growing dissatisfaction of the people in regard to the policy of the home government.

<sup>1</sup> *Journal Council of Va.*, MS., 1721-1734, p. 215.

<sup>2</sup> *Dinwiddie Papers*, vol. i, pp. 72, 160; *Journal House of Burgesses*, 1752-1755, p. 168.

<sup>3</sup> *Dinwiddie Papers*, vol. i, p. 140.

<sup>4</sup> *Ibid.*, p. 363.

## CHAPTER IV

### THE HOUSE OF BURGESSES <sup>1</sup>

IN 1619 the first legislative body to be convened in the colony was assembled. This first effort to establish a government in which the will of the people might be expressed through their representatives was at that early period but a beginning. When the government of the colony became royal, in 1624, the power of the Assembly was temporarily checked. Neither James I nor Charles I was very favorably inclined towards a popular legislature, although in the commissions to Wyatt (1624) and to Yeardley (1626) recognition of the Assembly was implied. There was apparently no session of the Assembly between 1624 and 1628.<sup>2</sup> But whether the Assembly did meet and no record exists of the sessions, or the royal wish was explicitly adhered to for a time, the fact remains that there was by 1628 legal recognition of it by the king, and the legislature was composed of the governor, the Council, and the representatives of the people. The House was expected to represent the interests of the colonists, which might suffer if left altogether to the governor and Council. The "Commons of Virginia represented by the House of Burgesses" was later used in referring to the popular branch of the Assembly.<sup>3</sup>

<sup>1</sup> An exhaustive treatment of the House is not here attempted but only enough is given to show its place in the royal government of the colony.

<sup>2</sup> Hening, vol. i, p. 130; Miller, pp. 33, 34, 36, 37; Burk, p. 15; Brown, *The First Republic in America*, pp. 641-643, 646-648.

<sup>3</sup> *Va. Mag. Hist. and Biog.*, vol. xxii, p. 346.

The governor and Council, soon after 1628, endeavored by issuing proclamations to make unnecessary the meeting of an Assembly. They even tried to check the influence of the House by imposing taxes, but the burgesses protested so vigorously that the efforts of the governor and Council failed.

It is of interest to note here to what extent the colonists as a whole participated in legislation, so far as suffrage was concerned. From 1619 to 1654 all freemen were granted the franchise, but it was then for one year somewhat restricted.<sup>1</sup> In 1670, as property-owners bore the burden of taxation, it was considered advisable to grant to them alone the right of suffrage.<sup>2</sup> This restricting of the privilege by a property qualification was approved by the British government.<sup>3</sup> In a very few years, however (1676), the Assembly deemed it necessary to restore the unqualified suffrage which had prevailed previous to 1670.<sup>4</sup> This act of June, 1676, passed as one of Bacon's laws, was, according to royal instructions (October, 1677) to Berkeley on his return to power after the death of Bacon, repealed.<sup>5</sup> By 1699 the penalty of five hundred pounds of tobacco was imposed on any one not a freeholder who voted.<sup>6</sup> The property qualification seems to have been enforced throughout the remainder of the colonial period. It was not, therefore, surprising that members of the House of Burgesses

<sup>1</sup> Hening, vol. i, pp. 333, 403, 412; Miller, p. 19.

<sup>2</sup> Hening, vol. ii, p. 280. The franchise was restricted so that "none but freeholders and housekeepers, who only are answerable to the publique for the levies shall hereafter have a voice in the election of any burgesses in this country."

<sup>3</sup> *Ibid.*, p. 425.

<sup>4</sup> *Ibid.*, p. 356.

<sup>5</sup> *Ibid.*, p. 425.

<sup>6</sup> *Ibid.*, vol. iii, p. 172.

were required to be property-owners in the counties which they represented.<sup>1</sup> Quakers were not, until about the beginning of the eighteenth century, permitted to vote, and it was not until near the close of the colonial period that Catholics were granted the franchise, even if they did own property.<sup>2</sup> Free negroes, mulattoes, and Indians were always disfranchised.<sup>3</sup> There were acts passed by the Assembly, beginning with 1646, imposing a fine upon those entitled to suffrage who neglected to exercise this right.<sup>4</sup> This was probably a precautionary measure, but it seems that there was some need of it.

The House gradually grew in numbers and increased in efficiency. Each county was represented by two burgesses. Their usually regular attendance indicated their interest in public affairs.<sup>5</sup> All of the officers and committees necessary to a legislative body were, by the end of the seventeenth century, to be found in the House — for example, the speaker, the clerk, the sergeant-at-arms, the door-keepers, the chaplain, and the various committees. The speaker of the House occupied a position of influence and power especially in the eighteenth century, and also during the

<sup>1</sup> Hening, vol. iii, p. 243; *Journal House of Burgesses, 1748-1753*, p. 74. A detailed statement regarding the real estate required in order to be granted suffrage is given by Miller, (*Legislature of the Province of Virginia*, pp. 61, 63).

<sup>2</sup> Hening, vol. i, p. 532; vol. iii, p. 172; *Journal House of Burgesses, 1761-1765*, p. 70.

<sup>3</sup> Miller (pp. 63-65), thinks that "it would seem that negroes possessing the regular qualifications of voters were granted the franchise until 1723, and then were permanently disfranchised."

<sup>4</sup> Hening, vol. i, p. 333; vol. ii, p. 82; vol. iii, p. 238; Miller, p. 65.

<sup>5</sup> William and Mary College had one representative in the House. In 1680, even during the royalist reaction under Culpeper, there were in the first session of this year thirty-five of the forty members present. *Journal House of Burgesses, 1659/60-1693*, pref., p. 32; *Fulham MSS., Virginia*, 1st box, no. 7.

period of the Protectorate, but in the earlier years of the seventeenth century and for some time after the Restoration his power was somewhat curtailed. He was at first, it is thought by Miller, probably appointed by the governor.<sup>1</sup> The weight of evidence seems, however, to show that he was always elected by the House, for had the governor been given the appointive power in this case he would certainly have raised some objection later to surrendering it. It seems that until about the middle of the seventeenth century he was elected by the Assembly as a whole, in which election the governor and Council participated, but from that time the burgesses alone had this power.<sup>2</sup> The governor was recognized in the choice of the speaker to the extent of approving the selection of the House. The custom was formally to request the governor to permit the House to choose a speaker, and then the House informed the governor of the result of the election and he confirmed the action of that body.<sup>3</sup> This was a mere formality, as the governor practically never objected to the one chosen by the House. The speaker was not, therefore, subject to the governor.

The clerk was, until 1688, elected by the House, when, upon royal order, he was dismissed by the governor for discussing the veto power with him and also refusing to surrender the journal of the House. The clerk was thereafter appointed by the governor,<sup>4</sup> but his salary was throughout the colonial period paid by the House, although Howard, in 1686, wished to have it paid out of the royal revenues. This was a very clear indication of the purpose

<sup>1</sup> *Legislature of the Province of Virginia*, p. 21.

<sup>2</sup> *Ibid.*, pp. 82, 83; Hening, vol. i, pp. 377-379, 382, 385, 512.

<sup>3</sup> *Journal House of Burgesses, 1695-1696*, p. 4; 1702-1703, pp. 3-4; 1705-1706, p. 130; 1710-1712, p. 240; 1766-1769, p. 188.

<sup>4</sup> *Ibid.*, 1695-1696, p. 4; 1702-1705, p. 4; 1705-1706, p. 131.



of the British government to keep the House under the supervision of the royal governor, but the effort was ultimately futile. There were, after the above incident, no serious conflicts between the House and the governor in regard to this matter, and no complaint on the part of the House of the unsatisfactory services of the clerk. So far as can be ascertained, the appointment of the clerk by the governor did not prevent that officer from serving the House very acceptably.

A discussion of the adequacy of the House in meeting the needs of the colonists quite naturally includes the question of the frequency of the sessions. From 1619 to 1659, with the possible exception of the few years from 1624 to 1628, the Assembly usually met annually.<sup>1</sup> Berkeley, in his instructions in 1642, was directed to call the Assembly, "as formerly, once a year, or oftener if urgent occasions shall require." In the protest in 1642 against the proposal for the reestablishment of the power of the London Company in the colony, it was stated that the happy condition of the colony under the direct administration of the crown was most clearly shown by the "freedom of yearly assemblies."<sup>2</sup> In 1659 the House passed an act legalizing the biennial sessions of the Assembly. The Assembly of 1662 was prorogued from session to session for fourteen years, thus not permitting an election of new burgesses, and had it not been for Bacon's Rebellion it would probably not have been dissolved until Berkeley was recalled. The colonists felt that the home government was infringing upon their rights when Culpeper and Howard not only sought to restrict the power of the Assembly in regard to the biennial

<sup>1</sup> Hening, vol. i, pp. 517, 531; vol. ii, p. 424; Miller, pp. 27-29, 34; *Va. Mag. Hist. and Biog.*, vol. x, p. 263.

<sup>2</sup> Hening, vol. i, p. 230.

as well as the annual meeting, but also in regard to taxation. In the instructions to Howard it was specified that he should endeavor to induce the Assembly to agree to the imposition of taxes by the governor and Council in case of emergency. The Assembly had from 1624, by several acts, declared the exclusive right of that body to determine taxation.<sup>1</sup> Early in the period of the Restoration, however, an act was passed (March, 1661) empowering the governor and Council to lay a public levy annually for three years, beginning September, 1662, so as to avoid the expense of calling an Assembly.<sup>2</sup> This was an exception and was, no doubt, found to be an unwise policy, as it was not repeated. It seems that the British government approved of this encroachment upon the legislature, for in the instructions to Howard (1683), to Andros (1692), to Nicholson (1698), to Nott (1705), and to Hunter (1707) it was specified that they should see that the Assembly passed an act empowering the governor and Council to lay a public levy so as to save the expense of the frequent assemblies. It was but natural that the House should refuse to acquiesce in such a measure. Although the calling of an Assembly was expensive,<sup>3</sup> and both the Council and the House sometimes about 1700 adjourned on account of not having a quorum,<sup>4</sup> still the House would not surrender, even in cases of emergency, a part of its power over taxation. On account of the expense of the annual meeting of the Assembly the people were quite will-

<sup>1</sup> Hening, vol. i, pp. 124, 171, 196, 244, 319.

<sup>2</sup> *Ibid.*, vol. ii, pp. 24, 85.

<sup>3</sup> The expense of the meeting of an Assembly was sometimes as much as the amount of the public levy which it imposed. Hening, vol. ii, pp. 24, 85.

<sup>4</sup> Non-attendance was due to the distance from their homes to the capital, the harvesting of crops, and the bad roads during winter. *Cal. St. P. Col.*, 1700, nos. 666, 739, 752, 809.

ing to have it called every two years, and in fact complained of the burden of annual assemblies. By the end of the seventeenth century the law prescribing that the Assembly should meet every two years was in force and generally endorsed.<sup>1</sup> But the custom of proroguing the Assembly from session to session had become, by the beginning of the eighteenth century, very common. From 1700 to 1775 there were frequent examples of prorogation, so that there were in many cases not only biennial assemblies, but also those that met annually, and in some cases those that held two, three and even four sessions in a year.<sup>2</sup> There seems to have been no objection in the eighteenth century to the frequency of the sessions, but there were complaints of the custom of prorogation, as it prevented a free expression of the popular will through a new election of burgesses.<sup>3</sup>

It is of interest to consider the expenses connected with the meeting of the Assembly. The members of the House were granted by their respective counties remuneration sufficient to cover their expenses. In 1661 the House, in addition to the appropriations by the counties for the traveling expenses of the burgesses, granted them a salary of one hundred and fifty pounds of tobacco a day while in attendance on the sessions of the Assembly, but by 1677 this salary was reduced to one hundred and twenty pounds.<sup>4</sup> In 1723 it was provided that this salary should be paid in current money at the rate of ten shillings for every hundred pounds of tobacco, later changed to ten shillings a day.<sup>5</sup> This salary was paid by the treasurer of the colony upon

<sup>1</sup> Bruce, *Instit. Hist. of Va.*, vol. ii, p. 433.

<sup>2</sup> *Journal House of Burgesses*.

<sup>3</sup> Hening, vol. vii, p. 518.

<sup>4</sup> *Ibid.*, vol. ii, pp. 23, 398; vol. iii, p. 244.

<sup>5</sup> *Ibid.*, vol. iv, pp. 136, 278.

order of the governor and a certificate of the speaker.<sup>1</sup> From 1736 to 1775 acts were passed quite regularly postponing the payment of the salary of the burgesses for from a few months to two years, but usually for a year. This was due to various causes, such as the arrears in the duties on liquors and slaves, the appropriations for military purposes, the rebuilding of the capitol, and in most cases to the "low circumstances of the treasury."<sup>2</sup> As the number of counties increased, the number of burgesses was augmented. This increase in the membership of the House and the frequency of the sessions in the eighteenth century indicate the expense attached to the meeting of the Assembly. The instructions to the governors after 1683 specified that they should have the salaries of the burgesses reduced so that they would not be a burden to the colonists. There seems, however, to have been no effort made in this matter. The speaker was at first compensated by a tax of one pound of tobacco, imposed especially for this purpose. He was, about 1660, paid six thousand pounds of tobacco annually by special act of Assembly.<sup>3</sup> Later every county was required to contribute towards his remuneration in proportion to the number of its tithables. This plan, no doubt, made the speakership very lucrative, if York County may be taken as typical, for in 1682 that county alone was assessed six thousand and thirteen pounds of tobacco for this purpose. During the period 1699-1766, when the speaker also performed the duties of the treasurer of the colony, he received five per cent of the money which he handled, and after 1734 was also paid £50 a year for auditing the accounts of the

<sup>1</sup> Hening, vol. iv, p. 279.

<sup>2</sup> *Ibid.*, p. 524; vol. v, pp. 172, 404; vol. vi, pp. 251, 570; vol. vii, pp. 56, 249, 493, 658; vol. viii, pp. 187, 490, 671.

<sup>3</sup> *Ibid.*, vol. i, p. 424; vol. ii, p. 38; Miller, p. 98.

inspectors of tobacco, which additional salary was gradually increased to £150. When the offices of the speaker and treasurer were again separated in 1766 the speaker was allowed, in lieu of his former emolument as treasurer, £500 sterling (changed in 1769 to £625 current money) out of the money in the hands of the treasurer, paid upon the warrant of the governor.<sup>1</sup>

The clerk of the House received a salary during the seventeenth century, which may be approximated from the salary for the eighteenth century. This salary, which was, of course, determined by the length of the session, varied from £50 to £300, with an average of about £125 a session, and was paid by order of the House. The clerk of the General Assembly, who was in reality the clerk of the Council,<sup>2</sup> was also paid out of the funds in the hands of the treasurer a salary which varied from £25 to £100, with an average of about £60 a session. The sergeant-at-arms, whose duties included that of messenger, received a salary that varied from £20 to £80, with an average of about £30 a session. The four door-keepers of the House received from £5 to £80, with an average of about £30, and the door-keeper of the Council from £5 to £20, with an average of about £10 a session. The chaplain received from £10 to £60, with an average of about £25 a session. The clerks of the more important committees were paid for their services. The clerk of the committee of public claims received an average salary of about £60, the clerk of the committee of privileges and elections an average salary of about £60, the clerk of the committee of propositions and grievances an average of about £40, the clerk of the committee for courts of justice an average salary of £30, and the clerk of the committee

<sup>1</sup> Hening, vol. viii, pp. 210, 394, 587.

<sup>2</sup> *Journal House of Burgesses, 1702-1705*, pp. 18, 25; *1705-1706*, p. 173.



of trade an average salary of £30.<sup>1</sup> There was a public printer near the end of the colonial period regularly paid by the Assembly, and since he was appointed by the House and performed services so closely related to the legislature, he may be considered an employee of that body. His salary was gradually raised until it was £450 a year near the Revolution. The copying of the acts of Assembly, the Journal of the Council, and the Journal of the House of Burgesses, to be sent to the home government, was a regular expense, the "usual allowance" for which was 3200 pounds of tobacco. The cost of the revision of the laws of the colony was borne by the Assembly.<sup>2</sup> This brief study of the regular expenses which were incident to the meeting of the Assembly indicates the amount which was usually taken from the treasury for this purpose.

Legislation was under royal supervision. The British government sought by means of the instructions to the governor, the governor's veto, and the examination of all laws passed by the Assembly to limit the power of that body.<sup>3</sup> The laws passed by the Assembly and signed by the governor were immediately in force, but were transmitted to the home government for approval. In addition to the laws, copies of the journals of the Council, the General Assembly, and of the House of Burgesses were quite regularly forwarded for examination.<sup>4</sup> The instructions to the governor in this regard were very explicit, specifying that

<sup>1</sup> Salaries of officers of the House mentioned in *Journal of the House of Burgesses* after about 1700.

<sup>2</sup> *Journal House of Burgesses, 1700-1702*, p. 257; *1702-1705*, p. 31.

<sup>3</sup> *Cal. St. P. Col., 1677-1680*, no. 1376; *1693-1696*, no. 121; *Acts Privy Council, Col., 1613-1680*, no. 1301; Miller, p. 165.

<sup>4</sup> List of Journals, Acts of the Council and Assemblies in Report of American Historical Association, 1908, vol. i, app. D.; *Sainsbury Papers, 1640-1691*, pp. 358, 367; *1691-1697*, pp. 52, 224.

each law should be sent separately, under the seal of the colony, to the king through one of the principal secretaries of state within three months, or sooner, after enactment. Failure to comply with these instructions would incur the royal displeasure and the forfeiture of a year's salary, and such other penalty as the king should inflict. Two copies of each law were sent to the home government, one copy to one of the principal secretaries of state, and the other to the Board of Trade. The Board of Trade sent these laws to the attorney-general for his opinion on them. The laws relating to trade and revenues were also submitted to the commissioners of the customs for their approval. They were all then passed on by the king in council.<sup>1</sup> After an act of Assembly had been confirmed by an order in council, it thus obtained the validity of an act of Parliament, and was not to be repealed by the Assembly or by the king separately but only by their joint action.<sup>2</sup> A study of the royal instructions to the governors after 1700 shows that the British government was determined to enforce its policy of minute supervision of the legislation of the colony. The number of clauses in the instructions regarding the Assembly and the duty of the governor to refuse his assent to acts of a certain character increased after about 1700. The governor was explicitly instructed not to sign any act passed for a less time than two years, except in certain cases regarding which he was minutely directed, nor to assent to any act for repealing any law whatever without the approval of the home government. This was to prevent the discontinuance of any act before the home government could examine it, and also to prevent the Assembly from repealing laws. Spotswood, in his speech to the Assembly (October 26, 1710), insisted on conformity to the royal in-

<sup>1</sup> *Acts Privy Council, Col.*, vol. ii, nos. 14, 453, 945, 1271.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, p. 179.

structions in passing acts of Assembly. "I shall, as I find you at leisure," said he,

lay before you some acts that need amendments by reason that they contain clauses, which have been judged unfit for the royal approbation, and here let me mind you, how vainly you make laws, if they square not either with the prerogative of the crown or with the interest of that country which protects us.<sup>1</sup>

A study of the acts passed by the Assembly with reference to the "suspending clause" brings out some interesting facts. This clause, which was by royal order required to be appended to certain laws, suspended the enforcement of these laws until the home government could pass upon them. This requirement which was enforced in the eighteenth century was objectionable to the colonists, as laws passed to meet certain emergencies were rendered ineffective by the delay in submitting them for examination by the home government.<sup>2</sup> The earlier volumes of Hening's *Statutes at Large of Virginia* contain no example of the use of this clause, and it is not until the fourth volume, covering the period 1711-1736, that it is found, and this volume has only six acts with this clause, and the first was passed in November, 1720.<sup>3</sup> The fifth volume has fifteen examples of its use,<sup>4</sup> the sixth volume nineteen,<sup>5</sup> the seventh volume twenty-six,<sup>6</sup> and the eighth volume (1764-1773) seventy-

<sup>1</sup> *Journal House of Burgesses, 1710-1712*, p. 241.

<sup>2</sup> Jones, p. 64.

<sup>3</sup> Hening, vol. iv, pp. 80, 294, 376, 459, 465, 537.

<sup>4</sup> *Ibid.*, vol. v, pp. 85, 89, 114, 117, 216, 219, 259, 284, 296, 299, 308, 395, 397, 400, 431.

<sup>5</sup> *Ibid.*, vol. vi, pp. 229, 299, 302, 308, 311, 314, 316, 321, 324, 402, 404, 407, 412, 432, 446, 448, 452, 512, 516.

<sup>6</sup> *Ibid.*, vol. vii, pp. 55, 127, 159, 161, 345, 379, 394, 412, 444, 452, 454, 457, 461, 466, 480, 483, 485, 487, 490, 516, 530, 548, 630, 634, 636, 638.

seven.<sup>1</sup> The last act with a suspending clause was passed March, 1773. The increase in the number of the examples of the use of this clause was very gradual from 1720 until 1764. The very great increase is quite noticeable after this date. The increasing number of acts with the suspending clause indicates the growing interference on the part of the British government in the enforcing of the laws of the colony. All acts of Assembly without this clause were effective from their passage, and continued so until either confirmed or disallowed by the home government. The large number of examples of the use of this clause shows that these acts passed by the legislature of the colony were prevented from becoming effective, certainly for many months and in some cases years, and in most cases disallowed altogether.<sup>2</sup>

Acts covering every phase of the life and government of the colony were from time to time disallowed, but it seems that those concerning trade, revenue, manufactures, finance, debts, and appropriations were most frequently repealed.<sup>3</sup> The British merchants were often the cause of the dis-

<sup>1</sup> Hening, vol. viii, pp. 16, 23, 27, 33, 35, 57, 59, 61, 63, 65, 68, 123, 135, 137, 139, 143, 154, 156, 161, 163, 166, 168, 170, 172, 176, 222, 223, 227, 230, 231, 238, 251, 252, 277, 279, 283, 285, 287, 291, 293, 303, 317, 332, 334, 357, 361, 385, 393, 438, 442, 444, 447, 450, 451, 454, 460, 464, 468, 470, 473, 474, 478, 480, 483, 486, 490, 629, 631, 635, 637, 638, 639, 641, 643, 665, 667.

<sup>2</sup> In one case it took seven years for the royal disapproval of an act passed in 1752 was not reported to the Assembly until 1759. Hening, vol. vi, p. 229; *Journal House of Burgesses, 1758-1761*, p. 134.

<sup>3</sup> *Acts Privy Council, Col., 1720-1745*, nos. 46, 59, 93, 156, 171, 239, 245; *1745-1766*, nos. 4, 138, 256, 392, 401, 449, 563, 684; *1766-1783*, nos. 36, 37, 125, 126, 161-165, 286-288, 318, 362, 399; *C. O.* 324, 12, pp. 131-134, 153, 222; *Journal House of Burgesses, 1758-1761*, pp. 40, 134, 151, 184, 288; *Va. Mag. Hist. and Biog.*, vol. xviii, p. 371. For a comprehensive treatment of this subject, for the colonies in general, see Russell, *Review of American Colonial Legislation by the King in Council*, Columbia University Studies in History, Economics and Public Law, vol. lxiv, no. 2.

allowance of the acts relating to trade which were not especially conducive to their interests. Acts relating to the church, the judiciary, and to personal and purely local matters were also disallowed. The British government was not careful to discriminate when only certain clauses of an act were objectionable, but disallowed the whole act and required a reënactment of the clauses which were not objectionable.<sup>1</sup> Any act which, according to royal order, should have the suspending clause was repealed if that clause were not included, regardless of the nature of the act.<sup>2</sup> The governor was informed of the disallowance of the acts of Assembly by the home government, and issued a proclamation to notify the colonists of this action. This proclamation was read from the bench by the justices of the county courts, from the pulpit by the ministers, and by the officer in charge of the musters of militia, and of course before the Assembly.<sup>3</sup> The number of acts which were disallowed increased after about 1700.

The House of Burgesses had extensive judicial powers previous to 1680, but at that time the right of hearing appeals was taken from that body. The House was, according to a contemporary writing about 1700, a great restraint "upon both the governor and Council for many years, till about 1680."<sup>4</sup> Before 1680 an appeal lay from the General Court to the Assembly, and was considered by a joint committee of councillors and burgesses, which committee was composed of three times as many burgesses as councillors. The burgesses held that the councillors having rendered an opinion on cases in the General Court should not

<sup>1</sup> *Journal House of Burgesses, 1727-1734*, p. 58.

<sup>2</sup> *Ibid.*, 1758-1761, pp. 288, 296, app.

<sup>3</sup> Hening, vol. v, pp. 432, 559, 567; *C. O.* 5, 200, p. 851.

<sup>4</sup> Hartwell, Blair, and Chilton, p. 25.



again sit on them in this joint committee. Culpeper, taking advantage of this dispute, secured a royal order forbidding appeals from the General Court to the General Assembly, and providing that they should be made to the king in council only in cases involving as much as £100, afterwards £300, and still later £500.<sup>1</sup> The fear lest the burgesses might secure absolute control of the judicial administration of the colony was really the reason for this change. Should the burgesses have had power to reverse the decisions of the General Court, composed of governor and Council, the highest royal officials of the colony would to this extent have been subordinate to them. As but one step remained from this to the assumption of political power, the British government wished to increase the power of the governor and Council, both judicially and politically. The protest of the burgesses, through their agent, to this change was without effect. Although the home government, at the suggestion of the strongly royal governor Culpeper, deprived the House of this privilege, still through the court of claims that body continued to exercise a certain degree of judicial power. The right to summon persons and to demand papers for examination gave to the committee of public claims judicial functions. Although the Council was usually requested to concur with the House in its decision as to public claims, still the House practically decided all such matters, as it had full power over appropriations.<sup>1</sup> In addition to this, the House performed certain other judicial functions, as shown in 1727, when two justices of the peace of Elizabeth City County were brought "in custody to answer at

<sup>1</sup> Hartwell, Blair and Chilton, pp. 25, 26. *Journal House of Burgesses, 1659/60-1693*, pp. 162, 196; *Journal Board of Trade*, vol. iii, p. 340; *McDonald Papers*, vol. vi, p. 225.

<sup>2</sup> *Journal House of Burgesses, 1727-1734*, pp. 38, 89, 158, 441; *1742-1749*, pp. 230, 248, 397; *1752-1758*, pp. 184, 204, 225, 313.

the bar of the House a complaint made against them for refusing to do their duty.”<sup>1</sup> The House was thus performing what the governor and Council would be expected to do.

The governor and the Council had general supervision of church affairs, and many matters relating thereto were referred to them. In the eighteenth century, however, the power of the governor and Council over ecclesiastical affairs was disputed by the House. The petitioning of the House in the eighteenth century for an act to dissolve a vestry in order that a new one might be elected, and complaints against the vestry, were quite frequent.<sup>2</sup> Full and careful examination of the complaints of such petitioners was given by the House, as indicated by the journal. The House was petitioned by church-wardens for power to dispose of the glebe and other land owned by the parish, and to decide as to location of a church.<sup>3</sup>

Although the Assembly was recognized by the governor and by the home government, still there were certain restrictions placed upon its activity, and especially during the royalist reaction after the Restoration. In the instructions to Culpeper in 1682, it was specified that all bills should be drafted by the governor and Council.<sup>4</sup> Before 1680 the governor had, on the request of the House, appointed a committee of the Council to assist in the preparation of bills, reports, addresses, and petitions. In that year, however, the House decided not to request that this committee

<sup>1</sup> *Journal House of Burgesses, 1727-1734*, p. 17.

<sup>2</sup> *Ibid.*, 1700-1702, p. 275; 1710-1721, p. 322; 1727-1734, pp. 11, 36; 1742-1747, p. 181; 1748-1749, p. 367; 1761-1765, p. 165; 1770-1772, pp. 207, 225, 232.

<sup>3</sup> *Ibid.*, 1702-1705, p. 34; 1727-1734, p. 89; 1748-1749, p. 369; 1752-1755, p. 131; 1756-1758, pp. 422, 472; 1761-1765, p. 165.

<sup>4</sup> *McDonald Papers*, vol. vi, p. 106; *Journal House of Burgesses, 1659/60-1693*, pp. 122, 144, 196, 206.

be appointed, except in the case of drafting petitions to the king. In 1684 the custom prevailing before 1680 was resumed. This indicates that the royal instructions to Culpeper were to some extent effective. He was also directed to summon an Assembly only by special direction of the crown. This instruction seems to have been executed by his successor, Howard, as five years elapsed without any legislative sessions; at least there is no record of any acts of Assembly between 1686 and 1691.<sup>1</sup> Culpeper was also instructed to reduce the salary of the members of the Assembly, and to see that the sessions were not unnecessarily prolonged.<sup>2</sup> It was under Culpeper that the rights of the colonists in general were ignored by both the governor and the British government. Certain governors strengthened their power by an alliance with the Council against the House. Berkeley and Culpeper, for example, had the support of the Council, and to a certain extent secured what they wished from the legislature.<sup>3</sup> "The sway of the Council over the burgesses" at this time was very apparent.<sup>4</sup> In the eighteenth century certain governors endeavored, but failed, to check the increasing power of the House. Under Dinwiddie, for example, the governor and the Council were combined against the House. Such a coalition did not always prove effective, for in the case of Dinwiddie, whose administrative policy was in jeopardy, coercion had to be abandoned and conciliation and compromise adopted in order to secure appropriations.

The governor, however, by his actual participation in

<sup>1</sup> Hening, vol. iii.

<sup>2</sup> Hartwell, Blair, and Chilton, p. 41.

<sup>3</sup> *Ibid.*, pp. 35-45; Andrews, *Colonial Self-Government*, p. 230.

<sup>4</sup> *Cal. St. P. Col.*, 1661-1668, no. 1532; By about 1700 the support of the Council was not necessary when the governor wished to dissolve the Assembly. Bruce, *Inst. Hist. of Va.*, vol. ii, p. 326.

legislation until about the beginning of the eighteenth century, exerted a direct influence on much that was done by the Assembly. Until the earlier years of the eighteenth century he usually sat with the Council in its legislative capacity and directed its proceedings. As the presiding officer of this "House of peers," Nicholson was complained of by some of its members because he "swayed and overawed" that body by his being "not only continually present," but by taking upon himself "to preside and debate, to state the question and overrule as if he were still in Council," by using shrewd tricks to carry his measures and by threatening both houses with his speeches.<sup>1</sup> The governor did not, after about 1725, however, sit in the upper house.<sup>2</sup> The governor and Council decided as to the time of the Assembly and called the meeting. On some occasions, however, he was instructed not to call an Assembly until ordered to do so by the home government.<sup>3</sup> The power of proroguing and dissolving the Assembly rested with the governor.<sup>4</sup> Occasionally, however, it was dissolved by direct royal order, when that body was acting contrary to some policy of the home government.<sup>5</sup> A striking example of royal supervision in this respect was furnished by James II, who, resenting very strongly the too democratic proceedings of the Assembly, ordered the governor (Howard) to dissolve it, and furthermore to disfranchise and to prosecute Robert Beverley, the clerk and chief promoter of the trouble, and in future to appoint the clerk of the House and not to

<sup>1</sup> Hartwell, Blair, and Chilton, pp. 35, 45; *Va. Mag. Hist. and Biog.*, vol. iii, p. 377.

<sup>2</sup> Miller, p. 127.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1721, p. 3.

<sup>4</sup> *Journal House of Burgesses, 1659/60-1693*, pp. 21, 157, 169; Miller, pp. 48, 119, 121; Beverley, vol. iv, p. 8.

<sup>5</sup> Miller, p. 122; *Dinwiddie Papers*, vol. i, p. 161.

leave his appointment to that body.<sup>1</sup> Howard, by royal instruction, had endeavored to influence the House to surrender a part of its power over taxation by authorizing him and the Council to lay a tax, which the House positively refused to do. This was, in fact, the reason for the royal instructions in regard to the clerk. Howard reported that the burgesses were spending their time in frivolous debates and in contesting the negative power of the governor in passing laws. Beverley was imprisoned, disqualified from holding any public office, and the journal of the House seized. He would probably have been removed, in addition to being fined and imprisoned, when the journal was seized in 1677, had not the governor, although ordered by the king to remove him, feared a popular uprising at that time. From 1688, the date of the royal order to Howard, to 1775 the clerk of the House was appointed by the governor, but paid by that body, although Howard wished to have him paid out of the royal revenues. By 1763 his salary was about £50 a week during the session of the House.<sup>2</sup>

The governor's signature was absolutely essential in rendering effective acts of the Assembly, and no act could be again passed over his veto. His veto was, however, subject to review by the home government.<sup>3</sup> He was restricted in his power of assenting to certain kinds of bills, a precaution intended in particular to protect British interests against objectionable local legislation. Disobedience to this

<sup>1</sup> Hening, vol. iii, pp. 40, 545.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, p. 412; *Journal House of Burgesses, 1659/60-1693*, pref., pp. 28, 287, 416; 1756-1758, pp. 390, 504; 1748-1749, p. 359; Hartwell, Blair, and Chilton, pp. 29, 39. There is no further mention by Hening of this power being again granted the House. The statement made by Bruce that after 1691 the House again elected its own clerk is incorrect. *Instit. Hist. of Va.*, vol. ii, p. 472.

<sup>3</sup> Hening, vol. iii, p. 40; Miller, p. 124; Beverley, p. 188; *Va. Mag. Hist. and Biog.*, vol. iii, p. 115.



instruction would involve the displeasure of the king and the possible removal of the governor. The attempt of the home government thus to restrict the independence claimed by the Assembly was resented, and various expedients adopted in defiance of royal authority. The most effective was the attaching of a rider to a bill appropriating money or supplies.

The governor, in addition to the powers mentioned which he exercised over the Assembly, did not hesitate on some occasions to use his appointive power to influence the legislature. Councillors and burgesses looked to him for administrative offices, and he used this power to secure their support.<sup>1</sup> The independence of the House was impaired by certain members accepting from him appointments to official positions.<sup>2</sup> He was also able to control to some extent the election of burgesses by the assistance of his own appointees. Councillors, who held the chief military command in several of the counties, the other military officers, the sheriffs, and justices of the peace looked after the election of men to the House of Burgesses who would be favorable to the governor. One of the two burgesses chosen for a county was sometimes gained by the expectation of securing the appointment as sheriff the following year. The governor sometimes got objectionable men out of the House by appointing them sheriffs.<sup>3</sup> Since the writs issued by the governor for holding elections for burgesses were addressed to and executed by the sheriffs, these appointees of the governor were enabled still further to influence elections. To prevent such interference with legislation, acts of Assembly passed in 1730 and 1762 absolutely disqualified sheriffs, and

<sup>1</sup> Miller, p. 127.

<sup>2</sup> Hartwell, Blair, and Chilton, pp. 25-29.

<sup>3</sup> *Ibid.*

provided that burgesses accepting offices of profit should resign their seats, though they might be reelected.<sup>1</sup>

Notwithstanding all the power of the governor over the Assembly still in the actual administration, he was compelled to call upon that body for assistance in conducting his government.<sup>2</sup> While this was not true of the earlier part of the seventeenth century, still there was even then, when the Assembly wielded not so much power as later, a recognition of its control of matters of finance.<sup>3</sup> There were certain periods when the Assembly apparently did not meet, for no legislation is recorded. These periods of from three to four years were from 1686 to 1691, also from 1715 to 1718, and again from 1748 to 1752.<sup>4</sup> There was no absolute need of annual sessions so far as appropriations for the salaries of the principal officers of the colony were concerned, for they were paid out of the regular revenues of the colony.<sup>5</sup> But since the British government very early adopted the policy of leaving the support of the colonial governments to the assemblies, there were many occasions when it became necessary for the governor of Virginia to call upon the Assembly for appropriations of money and supplies. No taxation within the colony was legal without the consent of the Assembly. The Assembly, by passing at different times, from 1624 to 1680, acts declaring that the House alone had the power to levy taxes, firmly fixed this principle. The only departure from it seems to have been in 1661, when to avoid the expense of calling an Assembly, which was usually very heavy, the governor and Council

<sup>1</sup> Hening, vol. iv, p. 292; vol. vii, p. 529.

<sup>2</sup> Miller, p. 114; Osgood, vol. ii, pp. 74, 75.

<sup>3</sup> P. L. Kaye, *The Colonial Executive, Prior to the Restoration*, Johns Hopkins University Studies, ser. xviii, nos. 5-6, p. 65.

<sup>4</sup> Hening, vol. iii; vol. iv; vol. vi.

<sup>5</sup> *Ibid.*, vol. ii, p. 466; vol. iii, pp. 344, 490.

were empowered to lay the public levy annually for three years.<sup>1</sup> The power of the House over appropriations was clearly demonstrated when Nicholson himself, after that body had refused to comply with the royal instructions to aid New York, decided to advance £900 for that purpose.<sup>2</sup> Spotswood, calling upon the legislature for funds with which to prepare for an expected attack by the French, and also for a war with the Indians, being refused, was compelled to apply to the home government for military supplies.<sup>3</sup> While Dinwiddie was governor, the House, in the controversy over the pistole fee, in declining to appropriate funds for the expected attack by the French, and the refusal to send delegates to the Albany Congress, showed the important part it had in the actual administration of the government.<sup>4</sup>

Not only in regard to appropriations, but also in purely executive matters, the House encroached upon the powers of the governor. After using the control of the purse to check abuses of executive functions, the House next deprived the governor of a certain degree of executive power.<sup>5</sup> The practice of giving detailed instructions as to the disposition of funds appropriated by the House left the governor but little discretion as to the use of such funds.<sup>6</sup> The House, through its very existence as a critical body, empowered to inspect certain public accounts, and as a court of claims to which claims against the public were presented, served to check the power of the governor. Dinwiddie was

<sup>1</sup> Hening, vol. i, pp. 124, 171, 196, 244, 319; vol. ii, pp. 24, 85.

<sup>2</sup> *Acts Privy Council, Col., 1680-1720*, no. 866; Beverley, p. 87.

<sup>3</sup> *Spotswood Letters*, vol. ii, p. 9.

<sup>4</sup> *Dinwiddie Papers*, vol. i, pp. 98, 99, 252, 298; vol. ii, p. 50.

<sup>5</sup> *Journal House of Burgesses, 1748-1749*, p. 324.

<sup>6</sup> *Dinwiddie Papers*, vol. i, p. 161; Greene, *Provincial Governor*, pp. 180, 181.

obliged to assent to a bill which provided that certain funds should be disposed of by commissioners.<sup>1</sup> Either directly or indirectly, through committees, the House assumed a part of the executive power.<sup>2</sup> In addition to these encroachments upon the governor, the House invaded what was regarded the exclusive right of the chief executive, that is, the conduct of military operations. The interference with the governor in this respect reached its height during the French and Indian War, when he was so dependent on that body. The House at this time not only prescribed in detail the purposes for which military supplies were to be used, but put the disposition of these funds in the hands of committees, dictated the course of military operations, and practically, through the appointment and removal of officers, really exercised much power over the troops.<sup>3</sup> The power of the governor over the militia was theoretically as extensive as formerly, but was not sufficiently recognized by the troops to compel them to obey the royal order, sent through Dinwiddie at the beginning of that war, to march to the Ohio.<sup>4</sup> The encroachment of the Assembly upon the prerogative of the governor in regard to military affairs also occurred in other colonies, and led Chalmers to state with reference to the conduct of the French and Indian War, that "the king's representative acted merely as the correspondent of his ministers. The war was conducted by committees of Assembly."<sup>5</sup> When Fauquier was governor, the Assembly practically had charge of military affairs. This was known to the home government, but the inability

<sup>1</sup> Hening, vol. iii, p. 214.

<sup>2</sup> *Dinwiddie Papers*, vol. i, p. 161.

<sup>3</sup> *Journal House of Burgesses, 1756-1758*, pp. 337, 357, 368, 374, 378, 414, 483, 484; *1758-1761*, pp. 265, 270, 273.

<sup>4</sup> *Dinwiddie Papers*, vol. i, p. 134.

<sup>5</sup> Chalmers, vol. ii, pp. 300, 301; Greene, *Provincial Governor*, p. 192.

of that government to check this serious encroachment upon royal authority was admitted. The Board of Trade, commenting on the attitude of the Assembly, lamented the fact that they were unable to change the spirit exhibited by that body.<sup>1</sup> The home government could not, especially near the close of the colonial period, dictate to the Assembly, for the royal prerogative was seriously questioned in the colony. In the instructions to the governors and in their correspondence with the home government, especially in the case of Dinwiddie and Dunmore, it is to be observed that such phrases as the "prerogatives of the crown," and "our royal prerogatives," occur.<sup>2</sup> These encroachments of the Assembly on the royal executive power as exercised by the governor were clearly recognized by Fauquier as the sign of an approaching conflict, and as early as 1759 and 1760 he warned Pitt against imposing heavy taxes on the colonies.<sup>3</sup>

The House increased its power by combining with its control over finances the appointment of the treasurer of the colony. From 1691 the treasurer was appointed by the House, and for sixty-seven years (1699-1766) the speaker of the House held the office.<sup>4</sup> In 1757 John Robinson, the speaker-treasurer, used his power against Dinwiddie by lending the public funds to certain members of the House in order to secure their votes. Thus Dinwiddie was nominally governor, but could not interfere with Robinson, whose influence was very great. When Fauquier was appointed governor in 1758, he was instructed to use every

<sup>1</sup> Chalmers, vol. ii, p. 352.

<sup>2</sup> *Dinwiddie Papers*, vol. i, pp. 72, 140, 160; Dunmore's Instructions.

<sup>3</sup> *Journal House of Burgesses, 1758-1761*, pref., p. 19.

<sup>4</sup> *Journal Board of Trade*, vol. x, p. 222; The combination in one person of the three functions of leader of the House, speaker, and minister of finance is perhaps without precedent. Greene, p. 186.



means to prevent the speaker from being appointed treasurer.<sup>1</sup> But instead of attempting to comply with this royal order, he permitted Robinson to continue in the exercise of his dual office, and so informed the Board of Trade. In a letter of May 12, 1761, to the Board of Trade he stated: "I am thoroughly convinced that no alteration can be made in this long established custom of appointing the speaker of the House of Burgesses, treasurer, without a manifest prejudice to his majesty's service." He referred to Robinson as the "darling of the country."<sup>2</sup> This was really a wise political act on the part of Fauquier and not a case of "graft." In his letter to the Board of Trade he very frankly admitted that the speaker was the most influential man in the colony and requested special instructions as to attempting to remove him from the office of treasurer. There were, as stated, very cordial relations existing between Fauquier and Robinson: "I have always found him," said Fauquier, "the most useful man to me in conducting his majesty's business."<sup>3</sup> This shows how rapidly the influence of the crown in the colony was declining.<sup>4</sup>

This study of the House enables us to ascertain, to some extent at least, its efficiency as a provincial body. We have seen that as early as 1635 it wielded much power, and especially during the Protectorate. During the royalist reaction following the Restoration, however, and especially under Berkeley, the House was not popular but rather a dictatorial oligarchy under the influence of the governor.

<sup>1</sup> *Journal Board of Trade*, vol. lxv, pp. 111, 107.

<sup>2</sup> *Journal House of Burgesses, 1758-1761*, p. 294.

<sup>3</sup> *Ibid.*

<sup>4</sup> "In all the colonies the assemblies had to a greater or less extent assumed the exercise of the appointing power over other offices, chiefly those concerned with the collection or payment of public money." Greene, pp. 186, 188.

But under Culpeper and Howard, who successively followed him, there was decided opposition on the part of the burgesses to the arbitrary policy of these governors. This resistance to oppressive royal authority increased throughout the remainder of the colonial period and was very pronounced at certain times in the eighteenth century. In order that the House might be provincial and truly serve the interests of the people and might not be under obligation to the royal government of the colony, it was specified that the burgesses should not hold any office, and especially one in the gift of the governor or other royal officials. By 1736, for example, tobacco inspectors were not only excluded from membership in the House but also not allowed to take any part in the election of members or to be present at the polls.<sup>1</sup> In 1742 an act was passed which rendered a former tobacco inspector ineligible to membership in the House until two years had elapsed since he had served in that capacity.<sup>2</sup> The House of Burgesses unquestionably occupied a position of very great importance in the administration of the affairs of the colony, and its efficiency as a provincial body was forcefully demonstrated.

<sup>1</sup> Hening, vol. iv, p. 481.

<sup>2</sup> *Ibid.*, vol. v, p. 153; vol. vi, p. 185.

## CHAPTER V

### THE LAND SYSTEM AND ITS OFFICIALS

DURING the seventeenth century the system of acquiring land by "head right" was approved by the home government, but this system was abused and evaded in almost every conceivable way.<sup>1</sup> It was provided that for every person transported to the colony fifty acres of land would be granted. False statements were made as to importation, shipmasters, of course, agreeing thereto in order to secure land for persons who did not actually come to the colony. The secretary of the colony, even as late as 1697, did not hesitate to dispose of land rights quite lavishly, charging for each from one to five shillings.<sup>2</sup> Transporting persons from England was too expensive when a planter wished to incorporate only a few acres into his plantation, so the custom gradually developed of securing a patent by the payment of a fee to the secretary, who affixed the seal of the colony to the grant. There was no law sanctioning this, but as the colony grew there was need of more land, and also a demand for an easier and less expensive method of acquiring it. Convenience and custom, therefore, sustained the method which was adopted.<sup>3</sup> By the beginning of the eighteenth century this custom was established by law, and the fee charged by the secretary was definitely fixed at five shillings.<sup>4</sup>

<sup>1</sup> P. A. Bruce, *Economic History of Virginia in the Seventeenth Century*, vol. i, p. 518.

<sup>2</sup> Hartwell, Blair, and Chilton, p. 16.

<sup>3</sup> Bruce, *op. cit.*, vol. i, p. 525.

<sup>4</sup> Hening, vol. iii, p. 305.

The tendency during the seventeenth century was to increase the size of the plantations, the average tract being about five hundred acres. There was, therefore, an increase in the number of acres specified in the patents issued, especially near the end of the century, several of them, for example, ranging from ten to one hundred thousand acres.<sup>1</sup> The establishment of the custom of the payment of a fee to the secretary by law encouraged the tendency towards the acquiring of large estates. The carelessness and even negligence of the surveyors, who did not survey certain tracts, tended to influence a wealthy planter to claim more land than he had justly acquired. Spotswood's estate aggregated 86,000 acres, and William Byrd owned 179,440 acres of the best land in the colony. Since the governor and Council controlled, to a large extent, the granting of land, and the councillors, and sometimes the governor, were large land-owners, it was difficult to prevent such a monopoly. An authority stated in 1696 that the land system was the chief hindrance to the growth of the colony.<sup>2</sup> The Council, in answer to an inquiry of the Board of Trade in 1708 as to the cause of the removal of inhabitants from Virginia to the neighboring colonies, stated that it was "the want of land to plant and cultivate."<sup>3</sup> Yet the councillors themselves were partly responsible for it. This condition of affairs was, of course, due to the fact that wealthy planters

<sup>1</sup> Bruce, *Ec. Hist. of Va.*, vol. i, pp. 531-532.

<sup>2</sup> Edward Randolph, surveyor-general of the customs, to the Board of Trade, in *Cal. St. P. Col.*, 1696-1697, nos. 176, 354. He stated that the members of the Council and "others who make an interest in the government" had procured large tracts so that there was no land for new settlers who came to the colony. This he held was the cause of the slow increase in the population. He estimated that of the 500,000 acres granted by patent, not more than 40,000 had been cultivated or in any way improved.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1720, p. 100.

retained land which they neither cultivated nor permitted to be used by others.

In the instructions to the governors after about 1700 there were clauses dealing with the land system and directing that no more land should be taken up than could be cultivated. Nott was ordered (1705) to propose a law to the Assembly restricting the taking up of land. It seems that there was an irregular practice of taking up land without having the required patents issued. The grants issued in regular form were, of course, registered in the secretary's office, and reports were from time to time made to the home government. In the above instructions Nott was directed to have the proposed law require every planter actually to live on the land which he held. The grants were to be limited to one hundred acres for the planter, and one hundred acres for each laboring person brought thereon within three years after the grant was issued. Should the planter fail to comply with this law, he was then to pay ten shillings a year on every one hundred acres retained. This plan was, however, upon the objection of the Council, practically abandoned. In the special additional instructions to Hunter (1709) the reason given was that the proposed method was "not agreeable to the laws, constitution and practice" of the colony. The system in operation previous to 1705 was continued, with the proviso that greater care should be exercised in regard to having patents issued, and also that three of every fifty acres should be cultivated within three years after possession had been obtained. The governor was to furnish the home government with the names of those holding over 20,000 acres. As late as 1765 extensive grants were issued. In the list of patents granted between October, 1764, and April, 1765, three hundred and nineteen are mentioned, ranging from ten acres to twenty



thousand acres.<sup>1</sup> In the instructions to Botetourt (1768) and Dunmore (1771) it was specified that no more than 1000 acres should be held by any one person, but the system of large grants was so well established that these instructions were not enforced.

The office of surveyor-general was from 1621 to 1624 under the appointment of the governor, but from 1624 to 1692 was filled by royal appointment under the great seal.<sup>2</sup> By the provision of its charter in 1692 William and Mary College was given the power of appointment to this office, and those who held this position after that date were appointees of the college.<sup>3</sup> It seems, however, that the governor and Council had a certain degree of supervisory power over these appointments, and in fact made them. Since the governor and several members of the Council were among the visitors and trustees of the college, and the president of the college was a councillor, it was not difficult for them to control the office. In the case of the appointing of Miles Cary, the first incumbent, it is to be observed that his name appears among the trustees of the college, to whom the power of disposing of this office had been granted.<sup>4</sup>

The surveyor-general appointed and commissioned the county surveyor for each county, but these appointments were submitted to the governor and Council.<sup>5</sup> Previous to

<sup>1</sup> C. O. 325, 54, p. 263.

<sup>2</sup> *Cal. St. P. Col.*, 1661-1668, no. 1105, p. 1119; 1669-1674, nos. 540, 644; *Va. Mag. Hist. and Biog.*, vol. xviii, p. 292; Stanard, p. 26; *Sainsbury Papers*, 1640-1691, p. 188.

<sup>3</sup> *Cal. St. P. Col.*, 1693-1696, no. 1808; *Va. Mag. Hist. and Biog.*, vol. i, p. 239; *Fulham MSS., Virginia*, 1st box, nos. 48, 115; Beverley, p. 198.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. i, p. 239.

<sup>5</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 97, 117, 133; *Cal. Va. St. P.*, vol. i, p. 198; *Cal. St. P. Col.*, 1696-1697, no. 32; *Fulham MSS., Virginia*, 1st box, no. 48; *Va. Mag. Hist. and Biog.*, vol. i, p. 240.

1692, and especially from 1676 to 1692, while this office was filled by royal appointment, the surveyor-general appointed his own deputy, who likewise appointed deputies, and these in turn appointed deputies. This gave rise to "much quarreling and complaint," as the surveyor-general did not for the period mentioned come to the colony. But the chief reason why the office of surveyor-general was changed from a royal to a provincial appointment was that the surveyors were generally elected burgesses, and exerted undue influence over the legislature.<sup>1</sup> The county surveyors were, after 1692, empowered to appoint deputies.<sup>2</sup> The surveyors received their instructions from the governor and Council.<sup>3</sup> They delivered every April to the auditor a list of all surveys made during the year, with a detailed account of them.<sup>4</sup> The surveyor-general and also the secretary kept a record of all land surveyed. The office of surveyor-general yielded about £50 a year. The surveyors were paid in fees fixed by law according to the survey made. In 1624 the fee was ten pounds of tobacco, later twenty, and by 1666 forty pounds for every 100 acres surveyed.<sup>5</sup> The person for whom the survey was made paid this fee to the surveyor, who, after deducting five per cent for himself, and one-sixth for the college, turned it into the office of the receiver-general.<sup>6</sup> The surveyors were paid out of the quit-

<sup>1</sup> *Cal. St. P. Col.*, 1689-1692, no. 1437.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 91.

<sup>3</sup> *Ibid.*, 1705-1721, pp. 97, 297; *Cal. St. P. Col.*, 1693-1696, no. 2191; 1696-1697, no. 37; *Cal. Va. St. P.*, vol. i, p. 224.

<sup>4</sup> *Journal Council of Va.*, Executive Session, October 31, 1723.

<sup>5</sup> Hening, vol. i, pp. 125, 335; vol. ii, p. 235; *Fulham MSS., Virginia*, 1st box, no. 48; Beverley, p. 199.

<sup>6</sup> *Journal Council of Va.*, MS., 1705-1721, p. 297; Hening, vol. iii, p. 57; vol. iv, p. 419; vol. v, p. 50; vol. vi, p. 91; Beverley, p. 226.

rents, with the approval of the home government, for any special surveying by order of the governor.<sup>1</sup>

In addition to the county surveyors there were near the close of the colonial period special "commissioners" appointed by act of Assembly to run the dividing line between certain counties, and also certain parishes, who were required to perform this service and to report to the Assembly.<sup>2</sup> Occasionally commissioners were appointed for such matters as running the boundary line between two colonies or surveying very large tracts of land.<sup>3</sup> These special surveyors, as in the case of the surveying of the boundary line between Virginia and North Carolina, and the boundary of the Northern Neck of Virginia, were paid out of the quit-rents upon royal order. The warrant specifying the compensation in these cases was countersigned by the lords of the treasury and transmitted to the governor.<sup>4</sup> The royal supervision of such matters is shown by the order in Council directing the Board of Trade to take up the question of surveying of the Virginia-North Carolina boundary with the governor of Virginia and the proprietor of North Carolina, and also by the appointment of the commissioners for this purpose.<sup>5</sup> In the case of the dispute as to the boundary of the Northern Neck, the names of persons holding land, the number and location of every acre in that section, and other details were all forwarded to the Board of Trade.<sup>6</sup>

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 44; *Cal. Va. St. P.*, vol. i, p. 126.

<sup>2</sup> Hening, vol. viii, pp. 601-606.

<sup>3</sup> Bassett, p. 180; Beverley, p. 199.

<sup>4</sup> *Cal. St. P. Treas. Books and Papers, 1739-1741*, pp. 58, 216; *Journal Council of Va.*, MS., 1721-1734, p. 354; *Sainsbury Papers, 1606-1740*, pp. 144, 163.

<sup>5</sup> *C. O.* 5, 210, p. 162.

<sup>6</sup> *Journal Board of Trade*, vol. xx, p. 412; vol. xlviii, pp. 32, 35, 48.

Every one to whom land was granted was required "to seat" or "plant" it within three years, otherwise it lapsed to the king, to whom all land in theory belonged.<sup>1</sup> When a land-owner died without will or heirs, his land escheated to the king. There was a "great area" of soil which, according to an authority, had lapsed to the king during the seventeenth century on account of failure to seat within three years.<sup>2</sup> Certain county records show cases of escheated land ranging from twelve to seventeen hundred and fifty acres.<sup>3</sup> In the earlier part of the seventeenth century the one in actual possession of the so-called lapsed land had by the king's charter the right to the land in question, but later it was necessary to petition for it. Land did not really lapse to the king, for any one desiring it might petition the General Court, and later it depended on the governor's favor as to whom among the petitioners would be granted the land so lapsed.<sup>4</sup> The governor issued a warrant to the escheator of the district in which the land was located, who with a jury of twelve men made inquisition. This inquisition was returned to the secretary's office, where it remained for nine months, in which time, if no one claimed the land, a patent was issued to the petitioner selected from those applying for the land.<sup>5</sup>

There were four escheators in the colony, among whom the colony was divided for the exercise of the duties of their office.<sup>6</sup> One escheator, therefore, served several counties,

<sup>1</sup> *Cal. St. P. Col.*, 1697-1698, no. 1320; Hening, vol. v, p. 418.

<sup>2</sup> Bruce, *Ec. Hist. of Va.*, vol. i, p. 564.

<sup>3</sup> *W. and M. Col. Quart.*, vol. vii, p. 303; vol. xii, pp. 106-108, 185-190.

<sup>4</sup> Hartwell, Blair, and Chilton, pp. 18-19.

<sup>5</sup> *Ibid.*; *Cal. Va. St. P.*, vol. i, pp. 150, 167; Hening, vol. ii, pp. 56, 136-137; *Journal Council of Va.*, MS., 1705-1721, p. 221.

<sup>6</sup> South side of James River, between James and York Rivers, between Rappahannock and York Rivers, and the Eastern Shore. *Fulham MSS., Virginia*, 1st box, no. 7.

and each was allowed to have one deputy.<sup>1</sup> They were usually appointed from the membership of the Council by the governor.<sup>2</sup> There was a law that no one should hold the office of escheator while filling any of the offices of surveyor, sheriff, or clerk of a court, but it was not always enforced.<sup>3</sup> Councillors were, however, permitted to serve in this capacity, notwithstanding the fact that the "same man who as ministerial officer takes and returns the inquiries of escheats, as judicial officer gives sentence in points of law upon the same office."<sup>4</sup> There were, as would be inferred, many irregularities in acquiring escheated land. The escheator was allowed a fee of £5 sterling or one thousand pounds of tobacco for every inquest, to be paid by the petitioner desiring the escheated land.<sup>5</sup> In addition to this fee, the petitioner was required to pay to the receiver-general for the king two pounds of tobacco per acre for the land obtained.<sup>6</sup>

The governor's power in regard to escheats was after about 1685, according to the instructions, somewhat curtailed. He was not only not to dispose of any forfeiture or escheat until the escheator or sheriff made inquiry by jury upon oath as to the value thereof, but also was required to send to the Board of Trade and to the lords of the treasury an account of the matter, and await directions. The es-

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 22, 75; Hening, vol. iii, p. 317; *Va. Mag. Hist. and Biog.*, vol. i, p. 238; vol. ii, p. 2.

<sup>2</sup> Hartwell, Blair, and Chilton, pp. 24, 33; *Va. Mag. Hist. and Biog.*, vol. ii, p. 2.

<sup>3</sup> Hening, vol. ii, p. 354.

<sup>4</sup> Hartwell, Blair, and Chilton, p. 24.

<sup>5</sup> Hening, vol. iii, p. 317; *McDonald Papers*, vol. vii, p. 154; *Journal House of Burgesses, 1659/60-1693*, p. 326.

<sup>6</sup> Hartwell, Blair, and Chilton, pp. 18, 19; Blathway's *Journal*, vol. i, p. 286.



cheators were required to conform to the laws of England in performing their duties. In their commissions it was specified that they should execute the duties of their office "according to the rules, customs, and practices of our escheators in our kingdom of England."<sup>1</sup> The close connection between the home government and this office is shown by the complaint against the fee of £5 charged by the escheator, being referred to the Privy Council. The action of the Privy Council in this matter was influenced largely by the desire of that body to perpetuate English institutions in the colony with as few changes as possible. It was stated that the Privy Council was opposed to changing that "ancient and customary fee."<sup>2</sup>

The office of secretary, one of the oldest in the colony, was invariably held by a councillor.<sup>3</sup> The secretaryship was a royal appointment, and the commission was granted under the great seal of Great Britain.<sup>4</sup> The governor, however, had power over the appointment to the extent of recommending a councillor for that office,<sup>5</sup> and in case of an emergency he did not allow the office to remain vacant, but made a temporary appointment, subject of course to royal approval.<sup>6</sup>

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. i, p. 238.

<sup>2</sup> *Acts Privy Council, Col.*, vol. ii, no. 320.

<sup>3</sup> *Cal. St. P. Col.*, 1661-1668, no. 454; 1689-1692, no. 505; Hartwell Blair, and Chilton, p. 33; *Va. Mag. Hist. and Biog.*, vol. i, pp. 226, 237; vol. xiv, p. 267.

<sup>4</sup> *Cal. St. P. Col.*, 1675-1676, no. 718; 1696-1697, no. 1320; C. O. 324, 50, p. 132; *British Museum, King's MSS.*, no. 205, p. 493; *Journal Board of Trade*, vol. xiv, p. 32; *Acts Privy Council, Col.*, 1680-1720, no. 825; *Journal Council of Va.*, MS., 1705-1721, p. 250.

<sup>5</sup> *Cal. St. P. Col.*, 1689-1692, nos. 683, 2286; 1696-1697, no. 1320; Hartwell, Blair, and Chilton, p. 24.

<sup>6</sup> *Cal. St. P. Col.*, 1689-1692, no. 2282.

The various functions pertaining to this office may be surmised when we learn that the seal of the colony was in possession of the secretary.<sup>1</sup> All patents and many other papers issued by the governor were in fact issued from the secretary's office. Practically all of the records of the colony were preserved there, such as the commissions to the officials of the colony, charters from the king, letters from officials in England to the governor, the governor's proclamations, the oaths taken, marriage licenses, the births and deaths, all proceedings of the General Court and admiralty court, a register of all wills probated, all letters of attorney issued, and a list of all tithables furnished by sheriffs.<sup>2</sup>

This office was the land office of the colony, and deeds to land and lists of escheated lands were recorded there.<sup>3</sup> All fines and forfeitures were certified to the secretary, all papers relating to coroners' inquests were filed in his office, and naturalization papers were issued from his office.<sup>4</sup> Among the writs issued by him may be mentioned the writs from the General Court and those for choosing burgesses issued by order of the governor.<sup>5</sup> The duty of furnishing passes to those desiring to leave the colony devolved upon him. Such passes were intended to prevent the secret transportation of persons in debt, and servants and slaves, but

<sup>1</sup> *Op. cit.*, 1675-1676, no. 718; *Journal House of Burgesses*, 1659/60-1693, p. 59; Stanard, p. 6.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, p. 127; Hening, vol. ii, pp. 27, 28; vol. iv, p. 44; Hartwell, Blair, and Chilton, pp. 48, 49; *Va. Mag. Hist. and Biog.*, vol. x, p. 145; vol. xi, p. 159; Beverley, p. 196.

<sup>3</sup> Hening, vol. ii, p. 95; vol. iii, pp. 305-306; vol. v, p. 411; vol. vi, p. 510; *Journal Council of Va.*, MS., 1692-1693, p. 146; *Cal. St. P. Col.*, 1661-1668, no. 1250; 1693-1696, no. 1311; 1696-1697, no. 1320; *Va. Mag. Hist. and Biog.*, vol. x, p. 59.

<sup>4</sup> Hartwell, Blair, and Chilton, pp. 48, 49.

<sup>5</sup> Hening, vol. iii, p. 291; *Journal House of Burgesses*, 1742-1747, pp. 77, 155; *Cal. Va. St. P.*, vol. i, p. 34; Beverley, p. 197.

other persons, and even councillors, were required to secure passes from the secretary before departing. The governor was forbidden by a law passed in 1660 to grant any such passes except on certificates filed in the secretary's office.<sup>1</sup> It was from his office that full reports of the proceedings of the General Court, and copies of all laws and public papers were dispatched to the home government.<sup>2</sup>

Before 1624 the compensation of the secretary was five hundred acres of land and twenty servants. By 1642 a fixed schedule of fees was arranged and also certain perquisites, which by 1661 were well established by law.<sup>3</sup> The income furnished by this office was in 1696 estimated at about 98,000 pounds of tobacco, or from £400 to £500 a year, and by 1763 it was estimated by Fauquier to be about £1000.<sup>4</sup> He received all the fees of the General Court and paid the clerk of the General Court, who was his deputy, a salary for his services.<sup>5</sup> By 1767 the clerk of the General Court received a salary of £50 a year out of the two shillings per hogshead revenue. In order to prevent exorbitant charges by the secretary, the fees allowed him, and also the clerks of county courts, were specified by law, and a list of them posted in a conspicuous place at his office.<sup>6</sup> On one occasion he received from the quit-rents, by royal order, £300 for his services in revising the laws of the colony.<sup>7</sup>

<sup>1</sup> Hening, vol. ii, p. 28.

<sup>2</sup> *Ibid.*, vol. iii, pp. 273, 274; vol. vi, pp. 46, 47; *Col. St. P. Col.*, 1696-1697, no. 943; *Va. Mag. Hist. and Biog.*, vol. x, p. 242.

<sup>3</sup> Hening, vol. ii, p. 144; *Va. Mag. Hist. and Biog.*, vol. iii, p. 122.

<sup>4</sup> Hening, vol. iv, p. 60; vol. v, p. 326; *Cal. St. P. Col.*, 1696-1697, no. 1320; *British Museum King's MSS.*, no. 205, p. 493.

<sup>5</sup> Beverley, p. 198.

<sup>6</sup> Hening, vol. ii, p. 55; vol. iv, p. 59; vol. v, p. 38; *Dinwiddie Papers*, vol. i, p. 44; Webb, *Justice of Peace*, p. 143; *Va. Mag. Hist. and Biog.*, vol. x, p. 145.

<sup>7</sup> Blathwayt's *Journal*, vol. ii, p. 295.

That the secretary did not on all occasions perform the duties devolving upon him in a creditable manner is evident from the acts passed for the regulation of that office. "Perhaps in no civilized country whatever," said an authority writing about 1700, "were the records so badly arranged and kept as in the former secretary's office of Virginia."<sup>1</sup> While this statement had reference to this office in 1674, still there was a clause in the instructions to all the governors to 1775, directing them to see that the secretary performed his duties in an efficient manner. Philip Ludwell reported (May, 1701) to the Council of Trade and Plantations that the records in the secretary's office were neglected. He stated that the secretary resided fifty miles from his office and his deputy fifteen miles. He maintained that the office was frequently closed except during the meeting of the Assembly, or when the Council convened, or on court days.<sup>2</sup>

The secretary had a certain degree of appointive power. The clerks of the county courts were, after about 1646, appointed by him and considered his deputies. He did not actually sell these clerkships, but took from each clerk every year a small sum for the appointment.<sup>3</sup> The governor was instructed not to permit the Council to interfere with the secretary in these appointments.<sup>4</sup> He appointed, on the approval of the governor and Council, his own deputy in case of absence from his office, such appointment being, however,

<sup>1</sup> Hartwell, Blair, and Chilton, p. 48; Henning, vol. ii, pp. 354, 355, 509, note; *Cal. St. P. Col.*, 1675-1676, no. 1123; 1697-1698, no. 819.

<sup>2</sup> *Cal. St. P. Col.*, 1701, no. 441.

<sup>3</sup> Bruce, *Instit. Hist. of Va.*, vol. ii, p. 401; *Va. Mag. Hist. and Biog.*, vol. viii, p. 184; *Sainsbury Papers, 1720-1730*, p. 268. About 1700 the total of secretary's commissions from clerks was about 36,000 pounds of tobacco.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, app. p. 10; *Spotswood Letters*, vol. ii, p. 279; *Cal. St. P. Col.*, 1689-1692, no. 1946.

subject also to royal approval.<sup>1</sup> He appointed the clerk of the General Court on approval of the governor and Council and the clerks employed in his own office.<sup>2</sup>

That the secretary occupied a position of much influence and responsibility may be readily inferred. Regarding the power wielded by this officer, Culpeper, writing in 1683, said: "The secretary is a patent office from the first seating of the country, the very next in dignity to the governor."<sup>3</sup> This officer was about fifteen years later referred to as the "greatest man in the government, next to the governor."<sup>4</sup> An influential man in the colony, writing in 1698 to the Lords of Trade, declared the secretaryship to be the "greatest trust, requiring the greatest abilities in the government."<sup>5</sup>

In the appointment of the county court clerkships after 1646, which were places of considerable profit and held by men of wealth and ability, he had it in his power to get each of these clerks returned to the House of Burgesses, or to gain a burgess by the gift of a clerkship, so as to have about one-half of the burgesses entirely in his interest and ready to vote as he directed.<sup>6</sup> A bill offered in the House in 1718 provided that the appointment of these clerkships should be taken from the secretary and given to the justices of the peace, for as long as they held office at the pleasure of the secretary who was an appointee of the king, the Assembly would be too much under the influence of the royal gov-

<sup>1</sup> Hening, vol. iii, p. 273; *Cal. St. P. Col.*, 1696-1697, no. 58.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, p. 156; Hartwell, Blair, and Chilton, p. 50; *Va. Mag. Hist. and Biog.*, vol. ii, p. 2.

<sup>3</sup> Stanard, pp. 6, 21; *Va. Mag. Hist. and Biog.*, vol. iii, p. 227.

<sup>4</sup> Hartwell, Blair, and Chilton, p. 50.

<sup>5</sup> *Cal. St. P. Col.*, 1697-1698, no. 656.

<sup>6</sup> Drysdale to Lords of Trade, June 29, 1726, in *Sainsbury Papers*, 1720-1730, p. 206; Stanard, p. 6.



ernor. Spotswood considered this an attack on the king's prerogative, and declared his intention to veto it should it pass. As the bill failed, the clerkships continued to be filled by the secretary's appointees.<sup>1</sup>

The power of the secretary was increased for a few years immediately before 1700 by the addition of the duties of naval officer and collector, and during the whole colonial period by his membership in the Council, which entitled him to sit in the upper house of the Assembly and in the General Court, which bodies when in session took much of his time.<sup>2</sup> In case of the death or absence of the governor, the royal instructions about 1700 specified that the secretary must be present in Council when that body discussed matters pertaining to the government of the colony.<sup>3</sup> On two occasions at least when the governorship was vacated the secretary, owing to his rank as senior councillor, succeeded to the presidency of the Council, and was thus acting governor of the colony.<sup>4</sup> The relations existing between the secretary and the governor were generally such as to conduce to the best interests of the colony, and sometimes were so intimate that the secretary was included with the governor in the complaint against the latter for maladministration.<sup>5</sup> In case of misconduct on the part of the secretary, the governor and Council were empowered to remove him, and in one case they practically compelled him to resign.<sup>6</sup> The action of the governor and Council in this respect was subject to review by the home government.

<sup>1</sup> *Spotswood Letters*, vol. ii, p. 279.

<sup>2</sup> *Cal. St. P. Col.*, 1697-1698, no. 636; Hartwell, Blair, and Chilton, pp. 48-50.

<sup>3</sup> *McDonald Papers*, vol. v, pp. 345, 346; *Cal. St. P. Col.*, 1677-1680, no. 1127.

<sup>4</sup> Stanard, pp. 17, 18, 21.

<sup>5</sup> *Cal. St. P. Col.*, 1677-1680, no. 182.

<sup>6</sup> *Ibid.*, 1689-1692, nos. 2284, 2290.

The secretary performed certain of the functions of the lord-chancellor, who was a prominent member of the king's Council, and custodian of the great seal of Great Britain,<sup>1</sup> for he was likewise an influential member of the governor's Council and the keeper of the seal of the colony. The secretary did not, however, fully represent the principal secretaries of state, of whom there were two and sometimes three, and who occupied positions of very great importance and nearness to the king. Any British subject might petition the king in Council or the king in person, but in the latter case the only approach was through a secretary of state.<sup>2</sup> In the colony petitions were, however, sent direct to the governor without passing through the hands of the secretary. The secretaries of state prepared and arranged the matters of business to be brought before the larger body of the whole Privy Council. They were very essential to the execution of the will of the king, and were usually men of wide experience in matters of state, and therefore of much influence.<sup>3</sup> The secretary of Virginia did resemble the secretaries of state in these respects, for as a member of the governor's advisory board he discussed with him all executive matters and also legislation. He was one of the men most necessary and useful to the governor in carrying out his plans.

<sup>1</sup> Anson, vol. ii, pp. 146, 149.

<sup>2</sup> *Ibid.*, p. 152.

<sup>3</sup> *Ibid.*, p. 156.

## CHAPTER VI

### THE FINANCIAL SYSTEM AND ADMINISTRATION

THREE methods of raising money existed in the colony: the duties on trade, the tax on land, and the poll tax. Thus the revenue system in Virginia was quite similar to that in England, where there were customs duties, land taxes, and poll taxes. When the control of the colony was changed from proprietary to royal in 1624 the customs duty on tobacco from Virginia paid in England by the importer was even then of much consequence.<sup>1</sup> There were really two duties on exported tobacco—the two shillings per hogshead paid by the shipper in the colony, and the English customs paid by the importer in England. One of the chief sources of revenue in the colony was this duty of two shillings per hogshead on exported tobacco, first imposed in March, 1657-8, by the Assembly.<sup>2</sup> By 1680 the governor (Culpeper) had this duty made permanent, and instead of being accounted to the Assembly as formerly, it was to be considered a royal revenue.<sup>3</sup> It was appropriated for govern-

<sup>1</sup> In 1625 the annual revenue paid by the English importers into the royal treasury from the duty on tobacco was £90,000, while in 1674 it was £100,000. In 1624 tobacco commanded a higher price in England than in 1674, and the duty was higher also. These facts evidently account for the similarity in the amounts just mentioned, although more tobacco was raised and much more imported into England in 1674, *Cal. St. P. Col., 1669-1674*, no. 1159; Bruce, *Instit. Hist. of Va.*, vol. ii, p. 590.

<sup>2</sup> Henning, vol. i, pp. 491, 523; vol. ii, p. 130.

<sup>3</sup> Blathwayt's *Journal*, vol. i, p. 62; *Journal House of Burgesses, 1659/60-1693*, pp. 4, 207, 449; Henning, vol. ii, p. 130.

mental expenses, being used for paying the salaries of the governor and other officials of the colony and for the usual contingent charges of the government, and was the principal fund upon which the governor depended.<sup>1</sup> The annual amount realized from this revenue was £2500 in 1675, and by 1680 it was about £3000.<sup>2</sup> The cost of collection was twenty-seven per cent of the whole amount. There was only a very gradual increase in the net sum realized,<sup>3</sup> but by

<sup>1</sup> *Dinwiddie Papers*, vol. i, p. 353; *C. O.* 5, 15, p. 585.

<sup>2</sup> William Blathwayt to Lords of Treasury, in Blathwayt's *Journal*, vol. i, p. 62. *British Museum, Add. MSS.*, no. 30372, p. 46.

<sup>3</sup> Blathwayt's *Journal*, vol. ii, pp. 27, 29, 63, 147, 207, 291; vol. iii, p. 84.

TWO SHILLINGS PER HOGSHEAD REVENUE FOR 1675

Collections.

| £    | s. | d. |
|------|----|----|
| 2546 | 2  | 7  |

Disbursements.

|      |    |    |                             |
|------|----|----|-----------------------------|
| 2270 | 17 | 10 |                             |
| 268  | 8  | 4½ | —(Balance due remaining     |
| 2539 | 6  | 2½ | in several debts.)          |
| 6    | 16 | 4½ | —(Balance now due on the    |
| 268  | 8  | 4½ | other side).                |
| 275  | 4  | 9  | —(Carried to next account.) |

—(*Journal House of Burgesses, 1659/60-1693*, p. 449.)

RECEIVER-GENERAL'S ACCOUNT OF TWO SHILLINGS PER  
HOGSHEAD REVENUE

OCTOBER 25, 1714—APRIL 25, 1715

Receipts.

| £   | s. | d. |
|-----|----|----|
| 926 | 8  | 6¼ |

Disbursements

|  | £            | s.   | d.  |
|--|--------------|------|-----|
| By balance of last account due Receiver-General... | 1070         | 9    | 11¼ |
| Salary of Governor                                 | (six months) | 1000 |     |
| Rent of Governor's house                           | " "          | 75   |     |

1750 this revenue amounted to £5000, and by 1760 to £7000 annually.<sup>1</sup>

The castle duty, first imposed in February, 1631-2, of one pound of powder and one pound of shot on every ton of cargo imported, was lowered in 1633 to one-fourth of a pound of each, and in 1645 was fixed at one-half a pound of each. In 1662 it was raised to three pounds, but the master of the ship had the option of paying this duty in money at the rate of one shilling three pence on every ton of cargo. Before 1680 it was paid to the captain of the fort at Point Comfort as compensation for his services, but after that date it was appropriated to the support of the government.<sup>2</sup> It was then known as port duty.

Revenues were also derived from the fines and forfeitures imposed by act of Parliament or act of Assembly for breach of penal law, contempt of court, and conviction for felony

|                                     |   |   |      |    |     |
|-------------------------------------|---|---|------|----|-----|
| Salary of Council                   | " | " | 175  |    |     |
| " " Auditor-General                 | " | " | 50   |    |     |
| " " Solicitor of Virginia Affairs   | " | " | 50   |    |     |
| " " Attorney-General                | " | " | 20   |    |     |
| " " Clerk of Council                | " | " | 50   |    |     |
| " " Gunner at Jamestown             | " | " | 5    |    |     |
| " " Armorer                         | " | " | 6    |    |     |
| Minister attending Assembly         |   |   | 10   |    |     |
| Contingent charges                  |   |   | 38   | 7  | 6   |
| Naval Officers 10% (£810. 2s. 2¾d.) |   |   | 81   |    | 2½  |
| Auditor 5% (£845. 8s. 3¾d.)         |   |   | 42   | 5  | 4¾  |
| Receiver-General 5% " " "           |   |   | 42   | 5  | 4¾  |
|                                     |   |   | 2715 | 8  | 5½  |
|                                     |   |   | 926  | 8  | 6¾  |
| Excess of Expenditures              |   |   | 1788 | 19 | 11¼ |

This account was signed by the receiver-general, the auditor, and the governor. Blathwayt, *Virginia Papers*, MS.

<sup>1</sup> *Dinwiddie Papers*, vol. ii, p. 271; C. O. 5, 216, p. 8.

<sup>2</sup> Hening, vol. i, pp. 176, 192, 218, 247, 301, 312, 423; vol. ii, pp. 9, 134, 177, 466; vol. iii, pp. 345, 491; *Va. Mag. Hist. and Biog.*, vol. iii, p. 121; *Dinwiddie Papers*, vol. i, p. 389.



or trespass: from a fee for the right of taking up land, which was five shillings for every fifty acres for which a grant was issued; and from a fee of two shillings per acre for escheated land. These revenues, including the duty of two shillings per hogshead on exported tobacco, were estimated by Gooch about 1735 at £5000, by Dinwiddie in 1755 at £6500, and by Fauquier in 1763 at £7000 annually,<sup>1</sup> and were all appropriated to the support of the government.

In addition to the revenues already mentioned was the quit-rent. All land in the colony was claimed by the king, and those who held it were required to pay an annual rent to him of one shilling for every fifty acres.<sup>2</sup> The quit-rent, which was imposed in January, 1639-40, was at first not required to be paid until seven years after the grant had been obtained. As this ruling had a tendency to encourage the acquisition of more land than could be cultivated, the privilege was revoked in the instructions to Berkeley in 1662 and also in those to later governors.<sup>3</sup> In the seventeenth century quit-rents were paid in tobacco, but by the beginning of the eighteenth century they were paid in either tobacco or current money.<sup>4</sup> Although there was some opposition to this revenue and frequent evasion of it, the collections showed a gradual increase. In 1684, for example, £574 was collected, and in 1703, £1843, the total paid in

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 121; *Dinwiddie Papers*, vol. i, p. 389; *British Museum, King's MSS.*, no. 205, p. 514.

<sup>2</sup> The only exception was in the case of those holding land in the Northern Neck between the Rappahannock and Potomac Rivers, which was for a time granted to Culpeper and his heirs.

<sup>3</sup> Hening, vol. i, pp. 228, 280; *Va. Mag. Hist. and Biog.*, vol. iii, p. 15; Instructions to the governors.

<sup>4</sup> Hening, vol. i, p. 316; vol. iv, pp. 41, 79; vol. vi, pp. 168, 171; vol. viii, p. 103. The governor acting upon his instructions endeavored in 1686 to have the quit-rents paid in current English money but the House insisted that as this was impossible on account of the scarcity of money, the use of tobacco for this purpose should be continued.

the quit-rents during this time being £22,418.<sup>1</sup> This period—about the middle of the colonial era—seems to be typical with reference to the income from this source. In 1703, £5743 was still held as a surplus, £3000 of which was, by royal order, transmitted to the British exchequer.<sup>2</sup> From 1704 to 1710 the collections of the quit-rents amounted to £14,719, £13,917 of which was paid into the exchequer.<sup>3</sup> In 1715 this revenue produced about £1500 a year; by 1740 the annual income was £4700, and by 1760, £6000. In 1742 the collections, including some arrears, amounted to £13,100, and in 1751 to £16,433.<sup>4</sup>

<sup>1</sup> Blathwayt's *Journal*, vol. ii, p. 356.

<sup>2</sup> *Ibid.*, p. 318. Virginia and New York were the only colonies in which the quit-rents were accounted for to the crown (*Cal. St. P. Treas. Books and Papers, 1731-1734*, no. 201). According to a statement in the *Wilmington Papers (1738-1765, MS.)* Virginia was the only colony that transmitted the quit-rents to the British exchequer.

<sup>3</sup> Blathwayt's *Journal*, vol. iii, p. 84.

<sup>4</sup> *C. O. 5, 216*, p. 8; *Journal Board of Trade*, vol. xxv, p. 215; *Journal House of Burgesses, 1756-1759*, p. 513; *Wilmington Papers, 1738-1765, MSS.*

#### RECEIVER-GENERAL'S ACCOUNT OF THE QUIT-RENTS

APRIL 25, 1713—APRIL 25, 1714

##### Receipts

|  | £    | s. | d. |
|--|------|----|----|
| Collections (including £35. 11s. 4d. for land escheated to king) ..... | 2145 | 6  | 1  |
| Disbursements  |      |    |    |
| Remitted to British exchequer .....                                    | 880  | 7  | 5  |
| Expense of remitting the above .....                                   | 4    | 8  |    |
| Salary of Commissary (one year) .....                                  | 100  |    |    |
| “ “ Attorney-General “ .....   | 60   |    |    |
| “ “ Sheriffs (some 10%, some 14%) .....                                | 131  | 8  | 6  |
| “ “ Auditor, 5% (£1133) .....  | 56   | 13 | 6  |
| “ “ Receiver-General “ .....   | 56   | 13 | 6  |
|  | 1289 | 11 | 0  |
|  | 2145 | 6  | 1  |
|  | 1289 | 11 | 0  |
| Net revenue .....  | 855  | 15 | 1  |

The relation of the quit-rents to the expenses of the colony, and the necessity of occasional drafts upon this revenue in order to meet them, was shown in a letter of May 30, 1717, from Spotswood to the Board of Trade. Spotswood requested an appropriation, and stated that the revenue derived from the duty of two shillings per hogshead on tobacco lacked £1973 10s. 4d. of the sum needed to pay the salaries for the preceding year; that the usual expenses

APRIL 25, 1716—APRIL 25, 1717

## Receipts

|                                |      |    |            |
|--------------------------------|------|----|------------|
| Surplus (April 25, 1716) ..... | 2899 | 16 | 7¼         |
| Collections " " " .....        | 1443 | 19 | 2½—money   |
| " " " 1717 .....               | 370  | 3  | 5¾—tobacco |
| Arrears (1712-1715) .....      | 191  | 16 | 8¾         |

|                        |      |    |             |
|------------------------|------|----|-------------|
|                        | 4905 | 16 | ¼           |
| Arrears for 1715 ..... | 294  | 15 | 9¾—money    |
| paid in 1716 .....     | 100  | 2  | 11½—tobacco |
| Arrears for 1714 ..... | 178  | 7  | 7 —money    |
| paid in 1716 .....     | 67   | 13 | 10¾—tobacco |

|                     |      |    |     |
|---------------------|------|----|-----|
|                     | 5546 | 16 | 3¼  |
| Disbursements ..... | 1780 | 14 | 11¼ |

|                   |      |   |   |
|-------------------|------|---|---|
| Net revenue ..... | 3766 | I | 4 |
|-------------------|------|---|---|

| Disbursements   | £    | s. | d.  |
|---|------|----|-----|
| Quit-rents for 1714 carried to account of two shillings per hhd. revenue. Apr. 25-Oct. 25, 1716 . . . . | 1022 | 5  | 11½ |
| Negotiating bills for above . . . . .   | 5    | 2  | 2¾  |
| Salary of Commissary (one year) . . . . .   | 100  |    |     |
| “ “ Attorney-General “ . . . . .  | 60   |    |     |
| Solicitor of Virginia Affairs, Additional salary . . . .  | 150  |    |     |
| Allowance to sheriffs and the people by the order of the government . . . . .                           | 198  | 9  | 9½  |
| Salary of Auditor, 5% . . . . .   | 122  | 8  | 5¾  |
| Salary of Receiver-General, 5% . . . . .  | 122  | 8  | 5¾  |
|   | 1780 | 14 | 11½ |

The accounts were signed by the receiver-general, the auditor, and the governor. Blathwayt, *Virginia Papers*, MS.

amounted to about £3500, and that there was £3766 1s. 4d. to the credit of the quit-rent account.<sup>1</sup> Three officials were regularly paid by royal warrant out of the quit-rents—the commissary, the attorney-general, and the solicitor of Virginia affairs; and a fourth, the auditor-general, was added to the list near the close of the colonial period.

While it was necessary on some occasions to appropriate a part of this revenue for the support of the government of the colony, the quit-rents were regularly sent to England.<sup>2</sup> The following instances are indicative of the constant practice of the colony.<sup>3</sup> In 1714, upon royal warrant for this purpose, £855 15s. 1d., the balance of the quit-rents for the year, was remitted.<sup>4</sup> Upon a warrant under the sign manual of the king of July 19, 1720, the receiver-general was directed to remit by bills of exchange £6791 7s. 7d., the balance of quit-rents for 1719 and the surplus.<sup>5</sup> When this revenue reached the royal exchequer it was not considered as a surplus held there for the future needs of the colony. For example, the quit-rents were used on one occasion at least for the royal service in the West Indies, and on another for paying the chief engraver of seals for seals made for the colonies in America; on another, for purchasing a way through King Street to Parliament House in London, and again for the allowance of £150 a year to the auditor-general of the colonies for office expenses.<sup>6</sup> Some

<sup>1</sup> *Spotswood Letters*, vol. ii, p. 247.

<sup>2</sup> *Blathwayt's Journal*, vol. ii, pp. 391, 469; vol. iii, p. 64.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 94, 96; 1721-1734, p. 59; *ibid.*, Extra Session, May 3, 1743; *Dinwiddie Papers*, vol. ii, pp. 575, 576, 580; *Cal. St. P. Col.*, 1689-1692, no. 1479.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, p. 226.

<sup>5</sup> *Ibid.*, p. 351.

<sup>6</sup> *Cal. St. P. Treas. Books and Papers*, 1729-1730, no. 128, p. 235, no. 146; 1739-1741, p. 365.

special service connected with the colony was occasionally paid for out of this revenue, such as the running of the boundary line between Virginia and North Carolina, for which £1000 was allotted.<sup>1</sup> A few other instances of special appropriation in addition to the occasional use of the quit-rents for local expenses were the £1000 allowed in 1710 for aiding the British expedition to Canada, £500 for helping New York against the French and Indians and also for building fortifications in Virginia in 1693, £500 for rebuilding William and Mary College in 1709, £250 for a special journey to South Carolina in the interest of Virginia, £1260 for negotiating an Indian treaty (Treaty of Lancaster, 1744), £1320 for negotiating a treaty with the Catawbias and Cherokees in 1756, and other appropriations for similar treaties and also for presents for the Indians.<sup>2</sup> No allotments whatever were to be made from this revenue without royal warrant.

Another source of revenue was the customs duties. There was a duty of one penny on tobacco exported from Virginia and Maryland to any other American colony, known as the "plantation duty," which was laid by Parliament in 1673 and granted by the king in 1692 to William and Mary College; it amounted to about £200 a year.<sup>3</sup> The duty on exported skins and furs, paid by the exporter, which ranged from three farthings to two shillings, or five shillings for tanned hides, was first imposed in 1691 by the

<sup>1</sup> *Journal Council of Va.*, MS., 1721-1734, pp. 215, 351.

<sup>2</sup> *Cal. St. P. Col.*, 1693-1696 nos. 1683, 1715; *Journal Board of Trade*, vol. ii, p. 283; vol. iii, p. 274; vol. v, p. 175; *Blathwayt's Journal*, vol. i, p. 684; vol. ii, p. 561; vol. iii, p. 85; *Journal Council of Va.*, MS., 1705-1721, p. 288; *Cal. St. P. Treas. Papers*, 1708-1714, p. 94; 1742-1745, p. 677; *Dinwiddie Papers*, vol. ii, p. 465.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 60; *Journal Board of Trade*, vol. x, pp. 219, 220. This duty amounted to £400 according to another authority. *Fulham MSS., Virginia*, 1st box, no. 48.



Assembly and appropriated for the support of William and Mary College. It amounted about 1700 to nearly £300 a year.<sup>1</sup> The placing of this duty, together with Indian wars, however, caused the fur trade to decline so greatly that the annual income derived from this revenue was later not more than £1000.<sup>2</sup> The duty on imported liquors, except those from England, was from three to six pence a gallon, which was appropriated by the Assembly of 1684 for the support of the government.<sup>3</sup> In 1726, £200 annually was granted out of this revenue to William and Mary College, and in 1734 one penny a gallon, or one-fourth of the revenue at that time, was given to the college.<sup>4</sup>

The duty on slaves brought into the colony, which was levied by the Assembly in 1699 for the purpose of rebuilding the capitol, and was later appropriated for the support of the government, was twenty shillings, paid by the importer, and, for a brief time, six pence paid by the master of the ship, on every slave. By 1732 this duty was changed to five per cent, later increased to twenty per cent, of the purchase price of each slave, paid by the purchaser within forty days after the sale. In 1772 a special duty of £5 a head was imposed on slaves imported from the West Indies, Maryland, Carolina, or any other American colony.<sup>5</sup> The duties on liquors and slaves amounted in 1708 to about £2000 a year.<sup>6</sup> The duty on servants, which was imposed

<sup>1</sup> Hening, vol. iii, pp. 63, 356; vol. iv, p. 431; vol. v, p. 236; vol. vi, p. 91; vol. vii, p. 283; vol. viii, p. 142.

<sup>2</sup> Beverley, p. 214; *Sainsbury Papers*, vol. iii, pp. 525, 530.

<sup>3</sup> Hening, vol. iii, pp. 23, 229; vol. iv, pp. 144, 470; vol. v, p. 311; vol. vi, pp. 194, 354; vol. vii, pp. 133, 266, 274, 386; vol. viii, pp. 38, 335, 529.

<sup>4</sup> *Ibid.*, vol. iv, pp. 148, 432; vol. v, p. 317; vol. viii, p. 335.

<sup>5</sup> *Ibid.*, vol. iii, pp. 193, 233, 346, 492; vol. iv, p. 317; vol. v, p. 28; vol. vi, pp. 218, 419, 466; vol. vii, p. 81; vol. viii, pp. 338, 532.

<sup>6</sup> Of the £4000 collected for the years 1706-1708, £3000 was appropriated for building the governor's house. *Cal. Va. St. P.*, 1652-1781, vol. i, p. 124.

by the Assembly in 1699 for the purpose of rebuilding the capitol, and was later appropriated for the support of the government, was fifteen shillings, paid by the importer, and six pence, paid by the master of the ship, on every servant imported. The duty on servants is not mentioned in the acts of Assembly after 1710.<sup>1</sup> The duty on passengers brought into the colony, imposed by the Assembly in 1662 for the purpose of furnishing additional compensation to the captain of the fort at Point Comfort, but later (1680) appropriated for the support of the government, was six pence on "every person imported, not being a mariner," paid by the master of the ship. This regulation must have included servants and slaves until special duties were imposed for them. The duty on passengers is not mentioned in the acts of Assembly after 1710.<sup>2</sup>

During the whole colonial period neglect and fraud were more or less prevalent in connection with the several revenues. In 1640 the secretary of the colony, Richard Kemp, petitioned the king to be allowed to go to England in order to answer the unjust charges against him of those who had been defauding the revenues of the colony.<sup>3</sup> The royal quit-rents were perhaps more often evaded than any other duties.<sup>4</sup> In 1721, however, the auditor-general stated to the

<sup>1</sup> Hening, vol. iii, pp. 193, 346, 492.

<sup>2</sup> *Ibid.*, vol. ii, pp. 135, 466; vol. iii, pp. 346, 492.

<sup>3</sup> *Sainsbury Papers, 1640-1691*, p. 4.

<sup>4</sup> *Ibid.*, 1691-1697, p. 350; *Journal Council of Va.*, MS., 1721-1734, p. 414; *Journal Board of Trade*, vol. x, p. 266; *Cal. St. P. Col.*, 1681-1685, no. 203. The sheriff of King and Queen County stated in 1692 that there were 38,000 acres in that county, regularly patented on which he could collect no quit-rents. *Cal. St. P. Col.*, 1696-1697, no. 176. Edward Randolph, surveyor-general of the customs, stated to the Board of Trade in 1696 that councillors held many thousand acres on which they had never paid any quit-rents. *Cal. St. P. Col.*, 1696-1697, no. 354.

Board of Trade that they were in good condition and were increasing in value.<sup>1</sup> In 1753 Dinwiddie estimated that there were about a million acres of land, held by certain colonists, on which no quit-rents had been paid. This statement was no doubt made largely to justify his action in imposing the pistole fee for affixing the seal of the colony to land grants.<sup>2</sup> The governor laid this fee in order to increase his perquisites, but he could not collect it. The duty on tobacco of two shillings per hogshead was very often evaded, and the governor was instructed to endeavor to prevent frauds and abuses in the collecting of this revenue.<sup>3</sup> Shipmasters would sometimes evade this and other duties by making false entries as to their lading,<sup>4</sup> an abuse which the Council sought to remedy by requiring £500 security of every vessel.<sup>5</sup> Liquors and other imports were often smuggled into the colony to avoid payment of the duty.<sup>6</sup> Not only the planters and masters of ships, but even the revenue officials themselves were sometimes guilty of defrauding the government by evading the duties.<sup>7</sup>

A letter from the Council of Virginia regarding the frauds in the customs, sent to the Board of Trade in 1733, was referred to the committee of the House of Commons having charge of such investigations.<sup>8</sup> When the matter

<sup>1</sup> *Journal Board of Trade*, vol. xxxi, p. 152.

<sup>2</sup> *Dinwiddie Papers*, vol. ii, pp. 363, 370, 374, 410.

<sup>3</sup> Bruce, *Ec. Hist. of Va.*, vol. i, p. 452; *Journal Board of Trade*, vol. xxxvi, p. 355; Instructions to the governors from Nicholson (1702) to Dunmore (1771).

<sup>4</sup> *Journal Board of Trade*, vol. iii, pp. 306, 338; vol. x, p. 218; vol. xliii, p. 58.

<sup>5</sup> *Cal. St. P. Col.*, 1689-1692, no. 1324.

<sup>6</sup> *Journal Council of Va.*, MS., 1705-1721, p. 202.

<sup>7</sup> *Spotswood Letters*, vol. i, p. 103; vol. ii, p. 176.

<sup>8</sup> *Journal Board of Trade*, vol. xliii, p. 58.

was under discussion in the House of Commons, the commissioners of the customs stated that the total amount of such evasion was £30,000 or £40,000 a year. This estimate, however, included not only the evasion in all the colonies, but also all the frauds connected with the customs in England.<sup>1</sup> It would be difficult to ascertain the exact amount for Virginia alone.

The instructions to the governors from Nicholson (1702) to Dunmore (1771) made special mention of the frauds in the customs of the plantation trade, and insisted upon the greatest care to prevent them. It was stated that such abuses "must needs arise either from the insolvency of persons who are accepted for security, or from the remissness or connivance of such as have been or are governors in the several plantations." This clause had reference to Virginia as well as to the other British colonies, and was therefore included in the above instructions. Though it was said that the governor was perhaps partly responsible for this condition of affairs, and that should he fail to endeavor to prevent a continuance thereof his commission would be forfeited, no governor of Virginia was removed for this offense. In addition to the formal instructions there were additional instructions and circular letters sent to the governor from time to time for the purpose of preventing illegal trading and evasion of the customs. A circular letter of June 21, 1768, sent to practically all the governors in the American colonies and in the West Indies, requested suggestions as to any needed changes in the "general instructions," with special reference to revenues, and stated that "the little improvement which has been made in his majesty's revenue of quit-rents, notwithstanding the rapid progress of settlement, shows that either the instruc-

<sup>1</sup> St. G. L. Siousset, *Virginia and the English Commercial System*, Report of the American Historical Association, 1905, vol. i, p. 90.

tions given relative to this object are imperfect or inadequate or that there has not been sufficient attention given to the due execution of them.”<sup>1</sup> Though there were evasions of the quit-rents in Virginia, this revenue amounted to more there than this circular letter would indicate.

Every law enacted by the Assembly that was concerned with the revenues, both royal and provincial, carried with it a penalty for violation, and special provision was made for preventing, if possible, any irregularities on the part of the officials. The Assembly honestly endeavored to prevent the evasion of the revenues, but the laws were not strictly enforced.

In addition to the revenues already considered, there was a system of taxation by poll for raising the public, county, and parish levies. A poll tax, known as a public levy, was laid every session by the House of Burgesses through the committee of claims, to which all public claims were referred. This revenue was used for the expenses of the meeting of the Assembly, for paying the militia, for horses impressed for military services, Indian interpreters, the sheriffs for special service, the ferrymen for transporting messengers, the erection of the capitol, the execution of criminals, the capture of runaway servants and slaves, and all such public claims. The public levy was, therefore, not uniform, but varied from year to year. It was usually about 15 or 20 pounds of tobacco for each tithable.<sup>2</sup> From 1624 to 1775 the smallest levy imposed was 3¼ pounds,

<sup>1</sup> C. O. 5, 241, p. 79.

<sup>2</sup> *Journal House of Burgesses, 1659/60-1693*, pp. 170-183; 1700-1702, pp. 218-220, 229-230. G. Webb, *The Office and Authority of a Justice of the Peace*, p. 211; Hartwell, Blair, and Chilton, p. 54; Hening, vol. iii, p. 25.

<sup>3</sup> Hening, vol. i, p. 143; vol. ii, p. 507; vol. iii, p. 481; vol. iv, p. 300; vol. v, p. 67; vol. vi, p. 247; vol. vii, p. 139; vol. viii, p. 533; *Journal House of Burgesses, 1659/60-1693*, p. 152.



and the largest was 116 pounds. In addition to the usual levy, extra levies were imposed for meeting such an emergency as war.

The county levy, also a poll tax, was laid by the justices of the peace, and was used in the payment of all county debts, such as the building and the repairing of the courthouse and the prison, the bridges and the ferry-boats, the cost of the coroner's inquests, and especially—until 1730 the largest obligation—the allowance to the two burgesses for their transportation to the capital and their expenses while attending the Assembly. The total expenses of the county were annually computed by the county court, with the assistance of the justices of the peace, and were divided equally among the tithables of the county.<sup>1</sup>

Another poll tax, the parish levy, was laid annually by the vestry of each parish for the payment of all parish debts, such as the erection of churches, the minister's salary, the clerk's salary, the care of the poor, and any other parish expenses. The Anglican Church was the established church of the colony, and all, regardless of religious belief, were compelled to support it. The parish levy, as well as the public and county levies, varied from year to year. The churchwardens, who supervised the collection of this levy, usually had the sheriff, who also gathered the public and county levies, collect it for them.<sup>2</sup>

The tithables of the colony included all male persons of any color above sixteen—later eighteen—years of age, and all negro, mulatto, and Indian women above sixteen. By 1769, however, free negro, mulatto, and Indian women

<sup>1</sup> Hartwell, Blair, and Chilton, p. 54; Webb, p. 211; Hening, vol. iv, pp. 279, 370.

<sup>2</sup> Hening, vol. vi, p. 88; Hartwell, Blair, and Chilton, pp. 53, 55; Jones, p. 63.

were exempted.<sup>1</sup> The three methods of raising funds just mentioned were all poll taxes, and the levies amounted annually to about one hundred pounds of tobacco for each tithable. It was estimated that they aggregated at the beginning of the eighteenth century about 2,000,000 pounds of tobacco a year.<sup>2</sup> The monetary value of these levies was determined by the price of tobacco. In 1682, when the public levy was 89 pounds of tobacco on each tithable, the total received from this levy alone was 1,349,418 pounds, the value of which was £6747, 1 shilling and 6 pence, tobacco at that time being worth ten shillings a hundred pounds. None of these levies were paid to the receiver-general, whose duty it was to receive the royal revenues. The public levy was paid to the treasurer of the colony, the county levy into the county treasury, and the parish levy into the parish treasury. These levies, of course, increased as the number of tithables increased.<sup>3</sup>

<sup>1</sup> *Dinwiddie Papers*, vol. ii, p. 474; Beverley, p. 204; Webb, p. 211; Hening, vol. viii, p. 393. Negro, Indian, and mulatto children were entered in the parish register at their birth, so that it might be ascertained when they became sixteen years of age (Hening, vol. ii, p. 296).

<sup>2</sup> Hartwell, Blair, and Chilton, p. 55; *Journal House of Burgesses, 1659/60-1693*, p. 183.

<sup>3</sup> Statistics for every year cannot be obtained.

|      | Population | Tithables |   |
|------|------------|-----------|---|
| 1671 | 40,000     | —         | ( <i>British Museum, Add. MSS.</i> , no. 30372, p. 46.)     |
| 1682 | —          | 15,162    | ( <i>Journal House of Burgesses 1659/60-1693</i> , p. 183.) |
| 1697 | 70,000     | 20,000    | ( <i>Sainsbury Papers, 1691-1697</i> , pp. 317, 342.)       |
| 1699 | 58,040     | 21,606    | ( <i>Cal. St. P. Col.</i> , 1701, p. 636.)                  |
| 1700 | —          | 24,291    | ( <i>Ibid.</i> , p. 640.)                                   |
| 1702 | —          | 25,099    | ( <i>Ibid.</i> , 1702, no. 767.)                            |
| 1723 | —          | 39,761    | ( <i>Va. Hist. Reg.</i> , vol. iv, p. 67.)                  |
| 1726 | —          | 45,857    | ( <i>Fulham MSS., Virginia</i> , 1st box, no. 7.)           |
| 1756 | 293,472    | *103,407  | ( <i>Dinwiddie Papers</i> , vol. ii, p. 474.)               |

\* Whites 43,329, negroes 60,078.

1756 \*295,672 — ( *W. and M. Col. Quart.*, vol. xix, p. 12.)

\* Whites 175,516, negroes 120,156.

The British government could not carry out fully its commercial policy owing to the difficulty in enforcing the regulations regarding the colonial export trade to England, which was mainly the result of there being, especially in the earlier part of the seventeenth century, no customs officials in any of the colonies except Virginia. In 1624, in order to prevent the cultivation of tobacco in England and the illegal importation of it into English ports, a proclamation was issued that all colonial tobacco was to be brought to London.<sup>1</sup> In 1627, and again in 1628, the governor of Virginia was instructed by the British government to take security from the masters of ships that all tobacco would be taken to London. In order further to prevent the direct shipment of tobacco to foreign countries, there was instituted in Virginia in 1631 the system of requiring bonds that tobacco and other products would be landed at London.<sup>2</sup> By 1636 the governor was instructed by the king to appoint an officer to keep a register of all exports from the colony, and to forward copies thereof to the lord treasurer. The Assembly, upon receipt of this instruction, created the office, and granted to the incumbent a fee of two pence on every hogshead of tobacco exported, which was paid by the masters of ships, and also certain fees on other products. Richard Kemp, secretary of the colony, was appointed to this office by the governor, but Jerome Hawley was about the same time appointed by the British government treasurer of Virginia, and in addition to collecting the quit-rents, was also authorized to keep the register of the exports of the colony. In the contest between Kemp and Hawley for the right to keep the register and to collect the fees, the royal appointee, Hawley, was successful. On the death of Hawley, which occurred soon after, Kemp was allowed to resume

<sup>1</sup> Beer, *Origins*, pp. 197-205.

<sup>2</sup> *Ibid.*, *Va. Mag. Hist. and Biog.*, vol. vii, pp. 258, 259, 375, 385, 386.

his duties as register. This was the first colonial customs office for imperial purposes.<sup>1</sup> Although this office was established by the Virginia Assembly, it was in obedience to an order from the king that the governor made the appointment. Jerome Hawley was the first of the large number of royal customs officials who somewhat later were concerned with the administration of the colonies.<sup>2</sup> The register was the direct predecessor of the collectors, the naval officers, and other customs officials of the period following the Restoration, and the report of the register forwarded to the lord treasurer was the forerunner of the "naval office lists," which after 1700 were sent quite regularly to England.<sup>3</sup>

During the Cromwellian period the customs officials were appointed by the Assembly and were responsible to it; their work was to receive the customs duties, especially the duty of two shillings per hogshead on exported tobacco, laid in March, 1657-8. This act was to remain in force for one year, and was repealed at the expiration of that time. In March, 1662, this duty was reestablished, and, as formerly, the customs officials were appointed by the Assembly and were accountable to it.<sup>4</sup> Although this took place after the Restoration, still, as in the case of the former act, the Assembly controlled the appointment and had general supervision of the officials. There was no mention of the commissioners of the customs in this act. On August 25, 1669, however, the commissioners of the customs in England appointed Edward Diggs to have charge of the revenues in Virginia and to correct abuses in the customs.<sup>5</sup> He was re-

<sup>1</sup> Beer, *Origins*, p. 208.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, pp. 207, 208, note; Hartwell, Blair, and Chilton, p. 60.

<sup>4</sup> Henning, vol. i, pp. 491, 523; vol. ii, p. 130.

<sup>5</sup> *Cal. St. P. Col., 1669-1674*, no. 104; *Cal. St. P. Treas. Books*, vol. iii, pt. 2, 1669-1672, p. 1126.

ferred to as the "collector of Virginia," and received a salary of £250 a year, paid by the receiver-general of customs in England.<sup>1</sup> The collectors, who were formerly commissioned by the Assembly, were soon also made royal officials. They<sup>2</sup> were thereafter, in accordance with an act of Parliament, appointed by the commissioners of the customs under the authority of the lords of the treasury.<sup>3</sup> The commissioners of the customs, with the approval of the lords of the treasury, suspended or removed a collector, transferred him from one district to another, or granted him permission to go to England.<sup>4</sup> The surveyor-general of the customs for the southern district of America, acting under instructions from the commissioners of customs, had general supervision of these officials, examined their accounts, issued instructions to them, and had authority to suspend them, subject, of course, to the approval of the commissioners.<sup>5</sup>

The governor administered the oath of office to the col-

<sup>1</sup> *Cal. St. P. Treas. Books*, vol. iv, 1672-1675, p. 427.

<sup>2</sup> Not to be confused with the collectors of the duties on skins and furs, on liquors, and on servants and slaves, appointed by the governor; or with the collectors of the six pence per month from seamen's wages for the royal hospital at Greenwich, appointed by commissioners in England for this purpose.

<sup>3</sup> *Cal. St. P. Treas. Books*, vol. iv, 1672-1675, p. 456; *Journal Council of Va.*, MS., 1698-1703, p. 25; Hartwell, Blair, and Chilton, p. 33; *Cal. St. P. Treas. Books and Papers*, 1731-1734, pp. 398, 524; Beverley, p. 198; *British Museum, King's MSS.*, no. 205, p. 498.

<sup>4</sup> *Cal. St. P. Treas. Books and Papers*, 1731-1734, p. 398; *Cal. St. P. Col.*, 1675-1676, no. 698; *Journal Council of Va.*, MS., 1705-1721, p. 60.

<sup>5</sup> *Journal Council of Va.*, MS., 1698-1703, p. 147; *British Museum, Add. MSS.*, no. 8832. Collectors' accounts of the one penny a pound on tobacco shipped from one colony to another were inspected by officials of William and Mary College, which institution received this revenue. After their examination the accounts were sent to the commissioners of the customs. *Cal. St. P. Col.*, 1696-1697, p. 457.



lectors and saw that they obeyed the instructions of the commissioners of the customs; in case of emergency he might make a temporary appointment.<sup>1</sup> He was empowered to "immediately remove" any collector guilty of fraud or neglect, to "appoint a fit person in his stead," and to notify the king at once, through one of the principal secretaries of state and the lords of the treasury.<sup>2</sup> The collectors gave bond to the king, countersigned by the attorney-general of Virginia, and took oath in the Council to execute faithfully the acts of Parliament in virtue of which they were commissioned.<sup>3</sup>

For a few years the offices of collector and naval officer were combined, as the duties pertaining to them were very closely related, but by 1699 they were separated. There were then eight collectors, soon reduced to six, who were assigned the districts near the larger rivers and Chesapeake Bay. These six districts were the same that were assigned the naval officers.<sup>4</sup> The members of the Council at first controlled these offices, and at certain times all six collectorships were held by them.<sup>5</sup> By 1699, however, the royal instructions to the governor specified that councillors were to be prohibited from holding the office of collector, as their

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 56, 100; 1705-1721, p. 90; *Va. Mag. Hist. and Biog.*, vol. i, p. 244.

<sup>2</sup> Instructions to the governors.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 60.

<sup>4</sup> Upper James River, Lower James River, York River, Rappahannock River, Potomac River, and the Eastern Shore. Henning, vol. iii, p. 195; *Journal Council of Va.*, MS., 1698-1703, p. 36; Beverley, p. 195; *C. O.* 324, 12, p. 240. There was later in addition to the collector for the Eastern Shore, the surveyor for that district, who was also a customs official coöperating with the collector, and after about 1730 there was also a surveyor on Elizabeth River.

<sup>5</sup> *Cal. St. P. Col.*, 1689-1692, no. 2295.

services in this capacity had not been satisfactory.<sup>1</sup> That there was good reason for this action of the British government is clearly demonstrated in the conniving at fraud, the accepting of bribes, and the actual complicity with pirates by collectors, both before and after the members of the Council were prohibited from holding the office.<sup>2</sup> After 1699 the clause in the instructions directing the governor to see that no member of the Council served in this capacity, specified that "persons much concerned in trade" were also to be excluded.

At first the collectors were not permitted to have deputies, but owing to the distance which some of them lived from the ports, it was deemed advisable by 1673 to grant their request in this regard, and they were empowered to appoint them, subject to the approval of the Council.<sup>3</sup> The granting of this privilege was not conducive to the best interests of the colony, for according to contemporary authority (1698) the revenue from the duty of two shillings per hogshead on tobacco was not so large as formerly because the regular officers lived away from the ports and entrusted the duties to "unsworn deputies," and they, in turn, to "unsworn masters of ships and exporters."<sup>4</sup> Because of fraud and neglect in the collection of this duty, the governors from Nott (1705) to Dunmore (1771) were instructed to refuse to allow collectors to have deputies, except in case of absolute necessity, and in such cases to require officials to take a solemn oath to perform their duties.<sup>5</sup>

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 55; Hartwell, Blair, and Chilton, p. 59; *Cal. St. P. Col.*, 1699, p. 312.

<sup>2</sup> *Cal. St. P. Col.*, 1689-1692, nos. 2199, 2284, 2295; *Cal. St. P. Treas. Papers*, 1689-1692, pp. 659, 660, no. 3177; 1693-1696, no. 1510; 1714-1719, p. 481; Hening, vol. iii, p. 232.

<sup>3</sup> *Cal. St. P. Treas. Books*, vol. iv, 1672-1675, pp. 427, 437, 456; *Cal. St. P. Col.*, 1689-1692, nos. 2317, 2388; 1697-1698, no. 645; 1696-1697, no. 1320.

<sup>4</sup> Hartwell, Blair, and Chilton, p. 59.

<sup>5</sup> Instructions to the governors.

The collectors received certain import and export duties, such as the two shillings per hogshead on exported tobacco and the one penny per pound on tobacco shipped from Virginia to any other American colony. After 1680 they also received the fifteen pence per ton on ships and the six pence per poll on persons brought into the colony. They were to endeavor to prevent illegal trade, and as far as possible to aid in the capture of runaway servants and slaves.<sup>1</sup> In some cases the collectors were appointed by the governor and the Council as justices of the peace, in order that they might detect illegal trade and seize prohibited goods, and they also acted as notaries public in matters relating to maritime affairs.<sup>2</sup> The passes sent by the lords of the admiralty to protect ships from seizure were furnished to masters of ships by the collectors. Owing to several complaints, after 1728 they and other customs officers were exempted from serving on juries, in parochial offices, or in the military service, unless it was absolutely necessary, as they were hindered in the performance of their duties thereby.<sup>3</sup> This exemption was made in obedience to the governor's instructions.

The collectors were at first paid only in fees, but later each received out of the British treasury, by order of the commissioners of the customs, a salary of from £40 to £100 a year, according to the importance of his district; each had, moreover, ten, later increased to twenty, per cent on all duties collected, and also fees, fixed by the Assembly, for

<sup>1</sup> *Journal Board of Trade*, vol. x, pp. 219, 220; *Cal. St. P. Treas. Papers, 1720-1728*, p. 97; *Cal. St. P. Col., 1693-1696*, no. 1700; 1696-1697, no. 290; Hartwell, Blair, and Chilton, pp. 33, 61; *Dinwiddie Papers*, vol. i, p. 389.

<sup>2</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 89, 111; 1721-1734, p. 156; *Cal. St. P. Col., 1699*, p. 495.

<sup>3</sup> Instructions to the governors.

entering and clearing ships.<sup>1</sup> The income from the percentage, of course, varied. Their total allowance for collections for a part of the year 1706 was £480 18s. 7d.<sup>2</sup> A table of all fees was to be exhibited for the information of the public. For the first offense of charging excessive fees £100 fine was to be imposed, and for the second the commission was to be forfeited. Apparently these penalties were not strictly enforced.

The collectors swore to their accounts before the auditor, the receiver-general, and the governor in Council; the accounts were examined by these officials, forwarded quarterly to the auditor-general of the colonies and the commissioners of the customs, and finally examined by the comptroller-general of the accounts of the royal customs.<sup>3</sup> It was by order of the commissioners of the customs that the collectors paid to William and Mary College the revenue arising from the duty of one penny per pound on tobacco exported to other American colonies.<sup>4</sup> Complaints made by London merchants or others that a collector was concerned

<sup>1</sup> Hening, vol. ii, pp. 387, 443; vol. iii, p. 110; *Dinwiddie Papers*, vol. ii, p. 597 note; Beverley, p. 198; *British Museum, King's MSS.*, no. 205, p. 498; *British Museum, Add. MSS.*, no. 8831, p. 122. Collectors, Upper James £40, York River £40, Eastern Shore £40, South Potomac £80, Rappahannock £80, Lower James £100; Surveyors, Eastern Shore £50, Elizabeth River £45. (*Audit Office, Declared Accounts, Customs, Bundles 800-821, Rolls 1033-1070.*) For entering and clearing a ship of 50 tons or less, 10s.; 50 to 100 tons, 15s.; 100 tons or more, £1. 5s. For taking a bond from the master of a ship, 2s. 6d.; a certificate of duties paid, 2s. 6d. Half of these fees only were charged ships owned by Virginians, Hening, vol. iii, pp. 195, 351; vol. vi, p. 96; Webb, p. 308.

<sup>2</sup> Blathwayt's *Journal*, vol. ii, p. 469.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1721, p. 76; 1721-1734, pp. 44, 109; *Cal. St. P. Col.*, 1685-1688, no. 745; 1689-1692, no. 2317; 1693-1696, no. 1829; 1696-1697, no. 1320; 1701, nos. 369, 423.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, p. 90; *Cal. St. P. Col.*, 1696-1697, p. 457.

in trade or was guilty of fraud were reported to the Board of Trade, and by that body referred to the commissioners of the customs.<sup>1</sup> It was said on several occasions that collectors failed to render correct accounts of their revenues, and they were openly charged with having misappropriated these funds.<sup>2</sup> In a letter to the Board of Trade of November, 1700, the surveyor-general of the customs showed how it was possible for collectors to evade the customs laws. He stated that it had formerly been the practice of some of these officials who were large planters, and who received one-half of the duty on tobacco carried from Virginia and Maryland to other colonies, to take off about one-third of the half due from masters of ships provided they would purchase their whole loading from them. The short entries made on the books were connived at by those concerned, as was indicated on one occasion by the books of the collectors on James River and Potomac River.<sup>3</sup> Some collectors were charged with having exacted "unreasonable" fees, and the colonists petitioned the Assembly for relief.<sup>4</sup> As late as 1766 an act was passed by the Assembly for "preventing frauds in the customs," the preamble of which was as follows: "Whereas it is almost impossible to detect officers who charge greater fees than by the said act of Assembly are allowed," and so on.<sup>5</sup> Collectors and naval officers were therefore required, under penalty of a fine of £10, to furnish receipts for all fees paid to them. The requiring of the collectors to furnish the commissioners of the customs with a list of all vessels owned by the colonists was done to pre-

<sup>1</sup> *Journal Board of Trade*, vol. xxvi, p. 299.

<sup>2</sup> *Va. Mag. Hist. and Biog.*, vol. ii, pp. 166, 169, 170, 386-389; vol. iii, p. 35.

<sup>3</sup> *Cal. St. P. Col.*, 1700, no. 906.

<sup>4</sup> *Journal House of Burgesses*, 1659/60-1693, p. 314.

<sup>5</sup> *Hening*, vol. viii, p. 251.



vent the collectors from owning trading ships, as well as to keep the commissioners informed in regard to the trade of the colony.

The Navigation Act of 1663 created the post of naval officer. The first direct mention of such an official was in 1672, in connection with Barbadoes, but it was stated at that time that there had been earlier incumbents.<sup>1</sup> In Virginia the governor at first appointed and removed these officers,<sup>2</sup> but by 1698 the nominations were approved by the commissioners of the customs and the appointees required to furnish security to them.<sup>3</sup> By 1742 they were named under the great seal of Great Britain.<sup>4</sup> Even when the governor had the power of appointment and removal, any suspension or removal could be referred to the Board of Trade by the aggrieved officer for examination.<sup>5</sup> The governor was not to imprison or suspend any of the officers of the royal customs except in cases of felony, murder, or treason, but he was to report any other offences to the commissioners of the customs.<sup>6</sup> The naval officers were at first usually selected from the Council, and for a certain time only councillors held these positions,<sup>7</sup> but by 1699 the royal instructions

<sup>1</sup> Andrews, *Colonial Self-Government*, p. 33.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 22; 1721-1734, p. 159; *Cal. Va. St. P.*, vol. i, pp. 210, 233; *Va. Mag. Hist. and Biog.*, vol. i, pp. 244, 374; vol. iv, p. 52; Hartwell, Blair, and Chilton, p. 24.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 25; *Sainsbury Papers*, 1720-1730, p. 354; *Cal. St. P. Col.*, 1700, no. 752; Instructions to governors from Nott (1705) to Dunmore (1771).

<sup>4</sup> *British Museum, King's MSS.*, no. 205, p. 495; *Journal Board of Trade*, vol. lxix, pp. 135, 186, 195; *C. O.* 324, 50, pp. 129, 133, 229.

<sup>5</sup> *Journal Board of Trade*, vol. xxiii, p. 58.

<sup>6</sup> *Cal. St. P. Col.*, 1700, p. 638.

<sup>7</sup> *Ibid.*, 1689-1692, no. 2295; 1696-1697, nos. 306, 1320; 1697-1698, no. 913; *Journal Board of Trade*, vol. x, p. 217; Hartwell, Blair, and Chilton, p. 24.

specified that councillors should not be appointed.<sup>1</sup> As soon as the councillors were prohibited from serving in this capacity, the offices of naval officer and collector, which had been held by one person in each district, were separated.<sup>2</sup> The number of naval officers was, until about 1700, eight, but was then reduced to six. After 1705 they were not permitted to have deputies, except in case of absolute necessity.<sup>3</sup>

Naval officers were assigned the same districts as the collectors and received certain fees.<sup>4</sup> Later, according to the importance of their districts, they were paid from £40 to £100 annually out of the British treasury; in addition, they received the fees allowed by the Assembly and collected in the colony.<sup>5</sup> The annual income, with the fees included, was in some cases rather large.<sup>6</sup> In 1763 one naval officer received £600 in fees alone.<sup>7</sup> Naval officers were re-

<sup>1</sup> *Cal. St. P. Col.*, 1699, p. 312; *Journal Council of Va.*, MS., 1705-1721, p. 55; *Journal House of Burgesses*, 1698-1699, p. 185.

<sup>2</sup> *Cal. St. P. Col.*, 1699, p. 312; 1700, p. 311; 1701, no. 1182; *Journal Council of Va.*, MS., 1705-1721, p. 133; *Spotswood Letters*, vol. i, p. 8; *Hening*, vol. iii, p. 195.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1721, p. 37; *Cal. St. P. Col.*, 1697-1698, no. 767; *British Museum, King's MSS.*, no. 205, p. 495; *Hartwell, Blair, and Chilton*, p. 24.

<sup>4</sup> *Sainsbury Papers*, 1691-1697, p. 345; *Beverley*, p. 198.

<sup>5</sup> *Hening*, vol. ii, pp. 387, 443; vol. iii, p. 110; *Dinwiddie Papers*, vol. ii, p. 597, note; *British Museum, Add. MSS.*, no. 8831, p. 122.

<sup>6</sup> Four of the six naval officers received, about 1705, from £200 to £300 a year; the fifth, £160, and the sixth, on the Eastern Shore, very little. (*Sainsbury Papers*, 1705-1707, p. 133; *British Museum, King's MSS.*, no. 205, p. 493; *Journal Council of Va.*, MS., 1705-1721, p. 133.)

<sup>7</sup> For entering and clearing a ship of 50 tons or less, 7s. 6d.; 50 to 100 tons, 10s.; 100 tons or more, £1. 5s.; for taking a bond from the master of a ship, 2s. 6d.; for a certificate to remove goods from one district to another, 2s. 6d.; for permit to trade, 2s. 6d.; for a loading cocket, 6d.; for a permit to load a ship for exportation, 2s. 6d. Virginia-owned ships paid only one-half of the fees, *Hening*, vol. iii, pp. 195, 351; vol. vi, p. 97; *British Museum, King's MSS.*, no. 206, p. 339; *Webb*, p. 309.

quired to post in their offices a list of these fees. The penalty for exceeding them was a fine of £100 for the first offense, and for the second offense, removal, ineligibility to office, and a fine of £20 payable to the informer. That irregularities occurred, notwithstanding this provision, and that naval officers evaded the enforcement of the penalties seems evident from the preamble to the law enacted in 1766 requiring them to furnish a receipt for every fee collected: "Whereas it is almost impossible to detect officers who charge greater fees than by the said act of Assembly are allowed, unless the officer or officers demanding and receiving the same be obliged to give receipts for such fees," and so on. Any naval officer refusing to give a receipt was subject to a fine of £10, payable to the informer, in any court of record in the colony.<sup>1</sup>

The duties of the naval officers were closely related to those of the collectors, and certificates furnished by naval officers for clearing ships and bonds taken by them were not valid unless approved by the collectors. The position of collector was, however, according to Drysdale, one requiring "less capacity to discharge and less security than that of the naval officer."<sup>2</sup> In addition to entering and clearing ships, the naval officers required a bond from the master of a merchant vessel that his statement in regard to his cargo was true, an oath that he would pay all required fees and would observe the trade laws, and a certificate that he would guarantee to land the cargo in an English port. They granted permission to masters to have their ships loaded, seized vessels trading unlawfully or refusing to pay port duties, took charge of prize ships awaiting the decision of the court, and captured runaway servants and slaves and

<sup>1</sup> Hening, vol. iii, pp. 196, 352, 353; vol. vi, pp. 97, 98; vol. viii, p. 251.

<sup>2</sup> *Journal Council of Va.*, MS., 1698-1703, p. 25; *Fulham MSS.*, Virginia, 1st box, no. 66.

also pirates.<sup>1</sup> They furnished the governor and the Council with a list of all ships in their respective districts and with minute descriptions of their tonnage, cargo, guns, number of sailors, owners, and so on.<sup>2</sup> They also sent to the British government quarterly statements of the imports and exports, with an account of all ships trading in the colony, whence they came and whither they were bound.<sup>3</sup> The orders of the Council to masters of ships to attend the meetings of the Council or to perform some special duty were sent through the naval officers.<sup>4</sup> On one occasion the naval officers, by order of the Council, assisted the captain of a royal ship sent to guard the Virginia coast by providing a sloop to accompany him and securing a house for his sick sailors.<sup>5</sup> They acted as notaries public in maritime affairs.<sup>6</sup> It is of interest to read that the French and Spanish prisoners sent on one occasion to Virginia from Carolina were placed in charge of the naval officers to be disposed of in any way they thought best for the good of the country.<sup>7</sup> Naval officers reported to the attorney-general the bonds furnished by the masters of ships, in order that he might prosecute those giving them as soon as they should be forfeited.<sup>8</sup>

Naval officers swore to their accounts before the governor and Council after they had been passed on by the receiver-

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 72, 96; *Cal. Va. St. P.*, vol. i, pp. 19, 30, 34, 92; Hening, vol. iii, p. 350; vol. iv, p. 430; vol. vi, p. 95; *Spotswood Letters*, vol. i, p. 3; *Cal. St. P. Col.*, 1699, p. 148.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 71, 95; *Cal. St. P. Col.*, 1701, pp. 369, 423.

<sup>3</sup> *Cal. St. P. Col.*, 1677-1680, no. 1590.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 38, 63, 65, 110.

<sup>5</sup> *Ibid.*, p. 86.

<sup>6</sup> *Cal. St. P. Col.*, 1699, p. 495.

<sup>7</sup> *Journal Council of Va.*, MS., 1705-1721, p. 65.

<sup>8</sup> *Cal. St. P. Col.*, 1700, p. 514. Bonds of £1000, in some cases £2000, were given, C. O. 5, 188, p. 26; 190, p. 196.

general and the auditor, by whom they were sent to the auditor-general and the commissioners of the customs.<sup>1</sup> They were required to furnish security to the amount of £2000. On account of the distance of certain naval officers from the capital, and the sickness of others, at certain times they were allowed to make oath before a justice of the peace as to the truthfulness of their accounts, and to send them to the governor and the Council. Once a year they had to settle personally with the governor and the Council.<sup>2</sup> One of the principal objections raised by the Board of Trade to the service of members of the Council as naval officers was that they rendered their accounts to themselves, and that they were interested in trade.<sup>3</sup> It is not strange that some cases of fraud were detected.<sup>4</sup> One authority stated in 1698 that councillors serving as naval officers exacted from £3 to £4 for clearing a ship of one hundred tons or more, for which £1 5s. was the maximum fee.<sup>5</sup>

The surveyor-general of the customs for America was first appointed in 1685. There were soon one for the northern district, another for the southern district, and a third for certain British possessions in the West Indies. In the southern district were included Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, the Bahama Islands, and Jamaica.<sup>6</sup> These surveyors-general were ap-

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 99, 103, 166-169; *Cal. St. P. Col.*, 1700, nos. 359, 934, 1057; *Fulham MSS.*, *Virginia*, 1st box, no. 66.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 19, 118, 131.

<sup>3</sup> *Cal. St. P. Col.*, 1697-1698, no. 767; Hartwell, Blair, and Chilton, p. 33; Instructions to the governors from Nicholson (1702) to Dunmore (1771).

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, p. 22; *Cal. St. P. Col.*, 1697-1698, p. 401; *Sainsbury Papers*, 1706-1714, p. 298.

<sup>5</sup> Hartwell, Blair, and Chilton, p. 33.

<sup>6</sup> *Plantations General*, vol. xi, M. 44, August 8, 1733; *Cal. St. P. Treas. Books and Papers*, 1731-1734, pp. 93, 204, 456; *Sainsbury Papers*, 1720-1730, p. 428; Osgood, vol. iii, p. 236.



pointed by the commissioners of the customs, and received instructions from them.<sup>1</sup>

The surveyor-general of the customs for the southern district was a member of the Council in Virginia, South Carolina, and Jamaica,<sup>2</sup> and up to 1733 was granted all the privileges of a councillor; after that date he was considered an "extraordinary" councillor only, unless admitted to these privileges by the crown.<sup>3</sup> The Council of Virginia refused to allow Robert Dinwiddie, appointed in 1741, to act with it in a legislative or judicial capacity, and appealed to the king to have his instructions so changed. It was decided by the Privy Council, after consultation with the Board of Trade, that the royal order must be obeyed, and that Dinwiddie was to sit and vote in the Upper House of the Assembly, and to serve as judge in the general court and the court of oyer and terminer.<sup>4</sup>

The surveyor-general was a revenue officer, under the authority of the lords of the treasury, and was therefore required to get permission from them should he desire to go to England.<sup>5</sup> His reports were usually sent to the Board of Trade, in addition to being forwarded to the treasury and to the custom-house.<sup>6</sup> Before the duty of one penny a pound on tobacco sent from one American colony to another was granted to William and Mary College, he had

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, p. 147; *British Museum, King's MSS.*, no. 205, p. 493; *C. O.* 324, 49, p. 104.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 219; 1721-1734, pp. 150, 252; *Journal Board of Trade*, vol. xxxix, pp. 29-30; *C. O.* 324, 8, p. 311; II, p. 26.

<sup>3</sup> *Sainsbury Papers*, 1606-1740, pp. 145-146; *Acts Privy Council*, Col., 1720-1745, no. 277; *C. O.* 324, 12, p. 4.

<sup>4</sup> *Journal Board of Trade*, vol. ii, p. 22; *Acts Privy Council*, Col., 1720-1745, no. 537.

<sup>5</sup> *Plantations General*, vol. xviii, p. 213.

<sup>6</sup> *Ibid.*, vol. xix, p. 281; vol. xx, p. 333.

special charge of this revenue.<sup>1</sup> As the representative of the commissioners of the customs, he had general supervision of the royal collectors and the naval officers, and issued instructions to them, and his action in this regard could not be questioned by the governor or the Council.<sup>2</sup> In the absence of the surveyor-general, however, the governor might make a temporary assignment to a vacant collectorship. He was on some occasions consulted by the governor as to the appointment of certain officers whose duties pertained to revenue or trade.<sup>3</sup> He was, in fact, empowered to fill any office of the customs vacated for any reason, but was required to submit the name of the appointee to the commissioners of the customs and the lords of the treasury. Since the matters brought to the attention of the court of vice-admiralty affected trade and revenue, the names of those appointed to the admiralty courts were referred to him.<sup>4</sup>

The surveyor-general rendered the British government valuable service in examining the books and accounts of revenue officers, and in securing debts owed to the government by the collectors or others.<sup>5</sup> He explained, sometimes personally, to the Board of Trade the grounds upon which complaints were made to it in regard to laws affecting trade and revenue, gave the reasons for complaints against the governor, and furnished information on general colonial conditions.<sup>6</sup> He was authorized to enter any ship or house to search for goods on which customs duties had not been

<sup>1</sup> *Journal Board of Trade*, vol. x, p. 219.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 249. Instructions to Earl of Orkney, March 22, 1728.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1721, p. 148.

<sup>4</sup> *Plantations General*, vol. iv, 5, (v), 7.

<sup>5</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 118, 120; 1698-1703, p. 147; *Cal. St. P. Col.*, 1689-1692, no. 2295; 1700, no. 906.

<sup>6</sup> *Journal Council of Va.*, 1698-1703, p. 146; *Sainsbury Papers*, 1606-1740, pp. 96, 106; *C. O.* 324, 8, pp. 311-321; 49, p. 104.

paid. His most valuable service, perhaps, was in detecting and to some extent preventing piracy and illegal trade, and in forwarding to the commissioners of the customs lists of ships and an account of goods forfeited to the king for the violation of the acts of Parliament regarding trade.<sup>1</sup> His salary, which was paid out of the customs, was £280, increased by 1715 to £495, and by 1763 to £600 sterling a year.<sup>2</sup> It was necessary for him to bear the expense of furnishing a boat, four boatmen and a clerk.

According to an act of Assembly of February, 1633, searchers were appointed "to search the ships and secret places of said ships, and to seize all concealed goods." They were to notify the governor and the Council of their action.<sup>3</sup> It seems that this office was discontinued, but the governor, seeing the need of an officer who would devote himself to preventing illegal trade, proposed to Colonel Robert Quarry, the surveyor-general of the customs, the reëstablishing of such an office in the lower district of the James River.<sup>4</sup> The commissioners of the customs, to whom the plan was referred, evidently acted favorably on the suggestion, for by 1714 there were searchers in addition to collectors and naval officers on the James and York Rivers and on the Eastern Shore, and also one in Lynnhaven Bay.<sup>5</sup> In making his report to the Board of Trade in 1763, Governor Fauquier stated that there were only two searchers in the colony, one in the lower district of the James River and one

<sup>1</sup> *Plantations General*, vol. iv, (1), pp. 5, 6; V, (2), November 5, 1700; February 13, 1701; November 17, 1701; vol. xxxi, p. 33.

<sup>2</sup> Fauquier to Board of Trade, in *British Museum, King's MSS.*, no. 205, p. 493; *Audit Office, Declared Accounts, Customs*, Bundle 801, Roll 1035, p. 789; Bundle 821, Roll 1070, p. 1641.

<sup>3</sup> Hening, vol. i, pp. 207, 213.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, p. 148.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. ii, p. 2.

on the Eastern Shore, and he emphasized the importance of increasing the number, on account of the frequency of illegal trading.<sup>1</sup> The searchers were appointed by the surveyor-general of the customs.

While the surveyor-general of the customs rendered valuable service in preventing illegal trade, still, owing to the extensive area over which he exercised jurisdiction, it was essential that such an officer as the searcher should remain in the colony and perform this important duty for him. As to the salary of the searchers, it is known that about 1740 they petitioned the lords of the treasury for a salary of £40 a year, which had been promised each of them by the surveyor-general of the customs.<sup>2</sup> Later they were paid in fees alone.<sup>3</sup>

The comptrollers of the customs were, as their name indicates, revenue officials. They were instituted near the close of the colonial period, and were appointed by the commissioners of the customs for the six revenue districts of the colony. They were not to supersede the regular naval officers, collectors, searchers, nor of course the surveyor-general of the customs, but were to coöperate with them. Their appointment was apparently an additional effort on the part of the British government to supervise the work of the collectors and the naval officers, and to prevent fraud. Their salaries were paid by order of the commissioners of the customs, but the fees to be collected by them, as by all revenue officials, were determined by the Assembly. The latter fact accounts for a petition of December 18, 1764, to the governor and the Council, referred by them to the House of Burgesses. Three comptrollers requested to be allowed to charge fees on all ships trading in the colony.

<sup>1</sup> *British Museum, King's MSS.*, no. 205, p. 495.

<sup>2</sup> *Cal. St. P. Treas. Books and Papers, 1739-1741*, p. 17.

<sup>3</sup> *Dinwiddie Papers*, vol. ii, p. 597, n.

The salaries of the three in question were £30 a year for the one serving in the upper district of the James River, £50 for the one serving in the lower district of that river, and £40 for the one serving on the Eastern Shore. They complained that these salaries were too small, and requested to be allowed to charge the "same fees as are allowed by law to the collectors of his majesty's customs, or such other fees as shall be thought reasonable," but the petition was refused.<sup>1</sup>

Among the duties performed by the comptrollers was the searching of ships with the coöperation of the collectors and the naval officers, on the authority of writs of assistance. This is shown by the following letter, in which the collector and the comptroller of Accomac wrote to the commissioners of the customs, on April 22, 1772, as follows:

Agreeable to our letter of November last, we, together with other officers, made application for writs of assistance to the Supreme Court,<sup>2</sup> but were refused them, for the same reasons as were given before, viz.: that application must be made for them every time we have occasion for them, and not for general writs of assistance.<sup>3</sup>

The collector and the comptroller of the lower district of the James River had the same experience the next year.<sup>4</sup> The attorney-general of Virginia, who had failed to secure writs for them, made the following explanation to the collector on April 26, 1773:

I have moved the court for a writ of assistance, agreeable to the desire of the commissioners of the customs, and according to the form of the writ said by the attorney-general of England,

<sup>1</sup> *Journal House of Burgesses, 1761-1765*, p. 301.

<sup>2</sup> General court of Virginia.

<sup>3</sup> *C. O.* 5, 145, p. 8c.

<sup>4</sup> *Ibid.*, p. 8m.



to be practiced there, but they have positively refused it, and declared that they can allow no other writ than such a one as was settled upon a former occasion, agreeable to our act of Assembly. I despair of ever obtaining what is wished for.<sup>1</sup>

The duties of the auditor were at first performed by the treasurer of the colony. The office was established by the Assembly in 1664, with Captain Thomas Stegg, whose commission was confirmed by the king, as the first incumbent.<sup>2</sup> This office was at first provincial in the sense that it was established by the Assembly, and the incumbent thereof was compensated by that body, but from the beginning the royal approval was necessary to confirm the appointments.<sup>3</sup> The governor had a share in the appointive power to the extent of making recommendations for the auditorship, and in case of an emergency he might appoint a temporary incumbent.<sup>4</sup> Upon the death of the auditor in 1704, the governor (Nicholson) himself assumed the duties of this office, and served as auditor for nine months. He did not, however, serve in this capacity under a commission, but simply performed the duties instead of making a temporary appointment.<sup>5</sup> The governor had the power to suspend the auditor, subject of course to royal approval,<sup>6</sup> but could not

<sup>1</sup> *C. O.* 5, 145, p. 8n.

<sup>2</sup> For a few years he was styled "auditor-general of Virginia" (*Acts Privy Council, Col.*, 1613-1680, no. 1309; *Cal. St. P. Col.*, 1669-1674, nos. 104, 192, 195, 196, 696).

<sup>3</sup> *Cal. St. P. Col.*, 1677-1680, no. 966; *Va. Mag. Hist. and Biog.*, vol. xiv, p. 270.

<sup>4</sup> Hartwell, Blair, and Chilton, p. 24; *Cal. St. P. Col.*, 1677-1680, no. 1416; 1696-1697, no. 1320; *Cal. St. P. Treas. Papers*, 1714-1719, p. 281; *Va. Mag. Hist. and Biog.*, vol. xiv, p. 267; vol. xvii, p. 35.

<sup>5</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 3, 9; Bassett, introduction, p. 48.

<sup>6</sup> Blathwayt's *Journal*, vol. ii, p. 57; *Cal. St. P. Treas. Papers*, 1714-1719, p. 207; *Cal. St. P. Col.*, 1669-1674, no. 696; *Spotswood Letters*, vol. ii, pp. 152, 159.

grant him leave of absence, as it was necessary for the auditor to get permission from the lords of the treasury when he desired to leave the colony. The auditor was unquestionably a royal appointee, and held his commission under the great seal.<sup>1</sup> He was, after 1680, upon the appointment of the auditor-general of the colonies, the deputy of that official.<sup>2</sup> When the auditorship was established, it was stated that only councillors and those who had long resided in the colony were eligible to this office, and it seems that this principle was generally observed.<sup>3</sup>

For several years the auditor also performed the duties of the receiver-general, but by 1705 it was found advisable to separate these offices.<sup>4</sup> Nicholson told the Board of Trade that the auditor kept all the books and money of his office at his residence, which was not at the capital. He advised that these offices be separated, and both officers be required to live at the seat of government and to keep their records in the capitol. In regard to the conduct of the auditor while serving as receiver-general and the opportunities for fraud and deception, it was stated by an authority in 1698 that the auditor made up his account, and, "for fashion," laid it before the governor and the Council, "but nobody offers to say anything to it, it is by him transmitted

<sup>1</sup> The auditor and the secretary were for many years the only officers besides the governor who held commissions under the great seal (*Acts Privy Council, Col.*, 1613-1680, no. 1309; *Journal Board of Trade*, vol. iii, p. 75; vol. vi, p. 230; *British Museum, King's MSS.*, no. 205, p. 493; *Cal. St. P. Col.*, 1685-1688, no. 1551; *Spotswood Letters*, vol. i, p. 165.)

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 3, 265; app., p. 52; 1721-1734, pp. 16, 302; Blathwayt's *Journal*, vol. i, p. 472; vol. ii, p. 167; *British Museum, King's MSS.*, no. 205; p. 493; *Dimwiddie Papers*, vol. i, p. 390; *Va. Mag. Hist. and Biog.*, vol. iii, p. 122.

<sup>3</sup> *Cal. St. P. Col.*, 1669-1674, no. 195; *Va. Mag. Hist. and Biog.*, vol. xiv, p. 270; Jones, p. 77; Stanard, pp. 22, 45, 46, 47.

<sup>4</sup> *Spotswood Letters*, vol. i, p. 7; Blathwayt's *Journal*, vol. ii, pp. 60, 378; Beverley, p. 196; Bassett, intro., pp. 27, 49; Stanard, pp. 22, 45-47.

to William Blathwayt.”<sup>1</sup> From 1677 to 1691 the auditor, in addition to serving in the capacities just mentioned, performed the duties of the treasurer of the colony.<sup>2</sup>

As the name of the office indicates, the auditor examined all the revenue accounts of the colony, except a few purely local ones under the supervision of the treasurer. Among these accounts were those of the royal collectors and naval officers, the quit-rents, the public claims, the fines and forfeitures. He swore to his accounts before the governor and the Council in April and October, and forwarded them through the auditor-general to the lords of the treasury.<sup>3</sup> The direct and careful supervising of these accounts by the lords of the treasury was shown in a letter from them to the auditor. He was instructed to send “authentic and sufficient vouchers for every particular payment” that was made by the receiver-general, by himself, or by any other person on warrants from the governor. He was to transmit “duplicates or attested copies of all original receipts, acquittances and papers” relating to the revenue.<sup>4</sup> Previous to about 1680 he was required to submit his report to the House of Burgesses before sending it to England, but Culpeper discontinued this custom, thus drawing on himself the disapproval of the most influential men of the colony, who for many years expressed a desire to have the practice resumed.

The auditor not only examined the quit-rents accounts, but also, while serving as receiver-general, retained the

<sup>1</sup> Hartwell, Blair, and Chilton, p. 59. William Blathwayt was auditor-general of the colonies.

<sup>2</sup> Blathwayt's *Journal*, vol. ii, p. 66; Hartwell, Blair, and Chilton, p. 61.

<sup>3</sup> Blathwayt's *Journal*, vol. i, p. 51; vol. ii, p. 167; *Journal Council of Va.*, MS., 1705-1721, pp. 19, 58, 91; *Cal. St. P. Treas. Books and Papers*, 1731-1734, pp. 403, 454; *Cal. St. P. Treas. Papers*, 1714-1719, p. 101.

<sup>4</sup> Blathwayt's *Journal*, vol. i, p. 171.

money arising from this revenue, and paid it out on the order of the lords of the treasury, sent through the governor.<sup>1</sup> Until 1700 the quit-rents were usually paid in tobacco; after that date they were also paid in money. The auditor was required by the governor and the Council to give directions to the sheriffs, in accordance with the royal instructions, for the sale of the quit-rent tobacco to the highest bidder at the county courts. This method was to supersede the former one of selling by "inch of candle."<sup>2</sup> That there was need for this change is shown by the fact that the quit-rents were on some occasions about 1700 sold privately to the governor and the councillors and to the auditor himself, who bought the most desirable of this tobacco for themselves. The auditor was thus treasurer and seller and buyer of the quit-rent tobacco.<sup>3</sup> He was expected to see that the government was not defrauded of this revenue. As late as the administration of Dinwiddie (1752-1758), the governor was careful to have patents for land taken to the auditor's office, where they were immediately put on the rent-roll, thus making more regular and certain the collection of the quit-rents.<sup>4</sup>

For a few years after the establishment of the office, the auditor received a salary from the Assembly;<sup>5</sup> later, he was paid a salary as a royal official of £100 a year out of the British treasury. His compensation was, however,

<sup>1</sup> *Cal. St. P. Treas. Papers, 1714-1719*, p. 109; Hartwell, Blair, and Chilton, p. 57; *Cal. St. P. Col., 1681-1685*, nos. 319, 1760; 1669-1692, no. 1003; 1693-1696, no. 534; 1697-1698, p. 758.

<sup>2</sup> *Cal. St. P. Col., 1699*, p. 387; 1702, no. 895; *Journal Council of Va., MS., 1705-1721*, p. 12.

<sup>3</sup> Hartwell, Blair, and Chilton, pp. 56, 57; *Cal. St. P. Col., 1696-1697*, p. 610; *Journal Board of Trade*, vol. x, p. 216.

<sup>4</sup> *Dinwiddie Papers*, vol. ii, p. 269.

<sup>5</sup> *Cal. St. P. Treas. Books and Papers, 1731-1734*, no. 201; *Cal. St. P. Col., 1669-1674*, no. 195.

largely in the form of a fee, which was gradually increased from three to seven and a half per cent of the revenue accounts audited, and amounted to about £400 a year.<sup>1</sup> This fee was again increased to ten per cent by the authority of the lords of the treasury, but by 1767 it was reduced to five per cent.<sup>2</sup> The auditorship was one of the few places of profit in the colony.<sup>3</sup> Governor Fauquier estimated in 1763 that the annual income of the office amounted to £800 sterling.<sup>4</sup>

As has been stated in connection with the auditorship, this office and that of receiver-general were originally combined. In 1705, on account of much criticism of the method of keeping accounts and uneasiness as to the possibility of fraud, the duties of the auditor were divided. On the death that year of William Byrd, the incumbent, Dudley Diggs was appointed auditor, and William Byrd, Jr., receiver-general.<sup>5</sup> The receiver-generalship was a royal appointment, and for many years this official held his commission under the sign manual of the king, or the signatures of the lords of the treasury by command of the king. By 1763 he was one of the few patent officers of the colony, and held his commission under the great seal.<sup>6</sup> The receiver-general

<sup>1</sup> Blathwayt's *Journal*, vol. ii, pp. 273, 469; *Cal. St. P. Col.*, 1696-1697, no. 1320; Hartwell, Blair, and Chilton, pp. 57, 61; *Va. Mag. Hist. and Biog.*, vol. iii, p. 122; *Journal House of Burgesses*, 1659/60-1693, p. 449.

<sup>2</sup> *British Museum, King's MSS.*, no. 206, p. 249; *Sainsbury Papers*, 1715-1720, p. 463; Blathwayt, *Virginia Papers*, MS.

<sup>3</sup> The secretary and the receiver-general were the other two, *Sainsbury Papers*, 1706-1714, p. 154.

<sup>4</sup> *British Museum, King's MSS.*, no. 205, p. 493.

<sup>5</sup> Blathwayt's *Journal*, vol. ii, p. 378; *Journal Council of Va.*, MS., 1705-1721, pp. 3-5, 29; Bassett, intro., p. 49.

<sup>6</sup> *British Museum, King's MSS.*, no. 205, p. 493; Blathwayt's *Journal*, vol. ii, p. 403; vol. iii, p. 141; *Journal Council of Va.*, MS., 1705-1721, pp. 33, 265; *Dinwiddie Papers*, vol. i, p. 390.



gave a bond for £6000 to the lords of the treasury, with either a London merchant or some man of means in Virginia as security, and he was also required to furnish another bond for £6000 to the governor.<sup>1</sup> He obtained permission from the lords of the treasury when he wished to go to England, and submitted to their approval the deputy whom he appointed to serve during his absence.<sup>2</sup> By 1763 he had a regular deputy, who assisted him in the performance of his duties.<sup>3</sup> Those who filled the office of receiver-general were practically all councillors, for four of the five who served from 1705 to 1775 were members of the Council.<sup>4</sup>

The duties of the receiver-general included the receiving of the quit-rents, the revenue arising from the export duty of two shillings per hogshead on tobacco, the one penny per pound on tobacco exported from Virginia to any other English colony in America, the port duty which was the revenue arising from the fifteen pence per ton on all vessels arriving in the colony, and all funds of the colony not received by the treasurer.<sup>5</sup> He kept an account of the sale of all rights for land, and received all forfeitures and escheats and the fines imposed by the general court and collected by the sheriffs.<sup>6</sup> The money arising from the sale of prize ships passed through his office, and the lords of the treasury re-

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, app., p. 54; 1721-1734, pp. 16, 301; Blathwayt's *Journal*, vol. ii, p. 406.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 359; *Journal Board of Trade*, vol. xxiv, p. III.

<sup>3</sup> Fauquier to Board of Trade, in *British Museum, King's MSS.*, no. 205, p. 493.

<sup>4</sup> Stanard, p. 23.

<sup>5</sup> Hartwell, Blair, and Chilton, pp. 56-62; *Journal Council of Va.*, MS., 1705-1721, app., p. 2; Beverley, p. 196.

<sup>6</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 72, 166, 168; 1705-1721, p. 29; 1721-1734, pp. 254, 302, 311; *Dinwiddie Papers*, vol. i, p. 21.

quired him to furnish an account of ships which had been seized and condemned for illegal trading.<sup>1</sup> He paid out of the revenue of two shillings per hogshead, on the order of the governor in Council, the salaries of the officers of the colony, also those of the auditor-general of the colonies and the solicitor of Virginia affairs, both of whom lived in England.<sup>2</sup> All the public expenses of the colony, except, of course, those paid out of the funds held by the treasurer, were paid out of the funds received in his office.<sup>3</sup> He was instructed to pay out money on warrant from the lords of the treasury or from the governor, but could pay out the quit-rents only on a royal warrant sent either directly to him or to the governor.<sup>4</sup> He of course reported to the lords of the treasury all payments made on the order of the governor.<sup>5</sup> The accounts of the revenues and the reports of disbursements forwarded to the lords of the treasury were certified to by the auditor and the governor, and sent by the governor.<sup>6</sup>

In remitting by bills of exchange the funds to be forwarded to England—the quit-rents, which had been paid in current money—the receiver-general was required to allow for the difference between colonial and sterling money. This difference varied, being at one time as much as forty-five per cent, but it was usually from fifteen to twenty-five per cent. The difference between the current money of the

<sup>1</sup> *Journal Board of Trade*, vol. vi, p. 176; *Blathwayt's Journal*, vol. i, p. 504; *Cal. St. P. Col.*, 1700, no. 326.

<sup>2</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 160, 167.

<sup>3</sup> *Ibid.*, 1698-1703, pp. 42, 45.

<sup>4</sup> *Ibid.*, 1705-1721, app., p. 2; *Blathwayt's Journal*, vol. ii, p. 295.

<sup>5</sup> *Cal. St. P. Treas. Books and Papers*, 1739-1741, p. 216.

<sup>6</sup> *Cal. St. P. Treas. Books and Papers*, 1735-1738, p. 519; 1739-1741, pp. 216, 264; *Journal Council of Va.*, MS., 1705-1721, pp. 61, 127, 302; *Dinwiddie Papers*, vol. ii, p. 271; *Blathwayt, Virginia Papers*, MS.

colony and bills of exchange was certified to by the Council upon the application of the receiver-general, in order that he might make up his accounts. The Assembly, also, from time to time determined the value of current money.<sup>1</sup> Although English and foreign coins were brought to the colony and paper money was also used in the eighteenth century, still there was a scarcity of money near the end of the colonial period. In a letter to the Earl of Halifax (June 14, 1765) Fauquier stated:

Circulating currency is growing very scarce so that people are really distressed for money of any kind to satisfy their creditors, and this evil is daily increasing, for the treasury notes are annually diminished by the burning and sinking all that are received for taxes; and gold and silver cannot pass in common circulation, as by the laws in force they cannot pass at their real value at the present high exchange, so that there

<sup>1</sup> *Journal Council of Va.*, MS., 1721-1734, pp. 59, 128, 457; *Journal House of Burgesses*, 1695-1696, p. 10; 1702-1705, p. 99; 1756-1758, p. 524; Henning, vol. iii, p. 502; vol. vi, p. 467; *Acts Privy Council, Col.*, 1745-1766, p. 390; 1766-1783, p. 384; Beer, *British Colonial Policy*, p. 179. In the seventeenth century and also in the eighteenth century tobacco was used as currency. The House of Burgesses in an address to the governor (October 29, 1686) insisted that the royal instruction in regard to paying quit-rents in money could not be executed as there was practically no money in the colony, and stated that there was no "possibility of such to be procured from England, his majesty's laws forbidding the transportation thereof." (*Journal House of Burgesses*, 1659/60-1693, p. 267.) There were, however, some coins used in the seventeenth century, and by the beginning of the eighteenth there were, in addition to the English coins, Spanish, Portuguese, French, Dutch, Flemish, Mexican, and Peruvian coins in the colony. The British government disapproved of these foreign coins. They were referred to as "illegal currencies" and objected to by the British merchants, and Parliament legislated against them. (*C. O.* 324, 12, p. 222.) Inspectors of tobacco issued notes which served as currency. After 1755 paper money (treasury notes) was issued by the colony. In 1773 copper coins were struck off at the royal mint in England especially for use in Virginia.

is no appearance of either in the colony. This private distress which every man feels increases the general dissatisfaction at the duties laid by the late Stamp Act, which breaks out and shows itself on every trifling occasion.<sup>1</sup>

The receiver-general was paid for his services at first four per cent, then seven per cent, then five per cent of the money passing thorough his office; at first this amounted to about £240 a year.<sup>2</sup> For furnishing on a certain occasion a complete roll of the quit-rents for a period of five years he received by warrant under the royal sign manual a compensation of £150.<sup>3</sup> Near the close of the colonial period, in 1763, the annual income of this office was estimated by Fauquier at £800 sterling.<sup>4</sup>

When William and Mary College was chartered in 1691, the Assembly imposed on skins and furs exported a duty which was appropriated to the support of that institution. The collectors of this duty were appointed by the governor; they accounted with the college, and received six per cent of this revenue for their services. They coöperated with the naval officers, who had charge of clearing ships, in order to guard against evasion of this duty.<sup>5</sup> When fraud was suspected, a collector was authorized to search a house or a ship for concealed skins or furs, and, with the assistance of the sheriff or constable, to seize them. One-half was to be given to the college and the other half to the informer. Later on, the collector became entitled to the latter half.

<sup>1</sup> *Wilmington Papers*, MS.

<sup>2</sup> Blathwayt's *Journal*, vol. ii, p. 542; *Dinwiddie Papers*, vol. i, p. 390; Blathwayt, *Virginia Papers*, MS.

<sup>3</sup> *Cal. St. P. Treas. Books and Papers, 1731-1734*, p. 536.

<sup>4</sup> Fauquier to Board of Trade, in *British Museum, King's MSS.*, no. 205, p. 493.

<sup>5</sup> Hening, vol. iii, pp. 63, 123, 356; vol. iv, p. 431; vol. vi, p. 91; vol. viii, p. 142.

By 1734, on account of the opportunity for evasion of the duty on the frontier, justices of the peace, sheriffs, and constables were empowered to seize skins and furs in possession of travelers near the frontier, unless the owners could prove that they were inhabitants of the colony and would also take an oath not to evade the duty should they decide to export. By 1759, however, the duty was evaded, especially by "pedlars" on the frontier, and a law was passed by the Assembly requiring every "pedlar" or trader to obtain a license from a collector "residing near the frontier." In addition to the collectors at the ports, there were thus, by 1759, collectors of this revenue stationed on the frontier. These additional collectors accounted with the college and received ten per cent for their services. They were empowered, in addition to granting licenses to traders, to take a bond of £20, with security, from each of them, to insure compliance with the laws regarding this duty.<sup>1</sup>

The collectors of the duty on imported liquors were appointed in 1691 by the governor to collect this duty from merchants and others receiving spirituous liquors, wines or beer. They accounted twice a year, April and October, with the treasurer of the colony, who reported to the Assembly. At first they were allowed ten per cent for their services, but in 1699 this was reduced to six per cent. A collector in each of the six revenue districts coöperated with the royal collectors and naval officers there in seeing that no ship was permitted to land liquors until it had been duly registered. They were empowered to go on board a ship and seize any liquors on which the duty had not been paid, and to take forcible possession of any such liquors if landed and concealed.<sup>2</sup> By 1736, on account of the evasion of this duty by

<sup>1</sup> Hening, vol. vii, p. 283. Fees for license: £3 for the college, 20s. for the governor, and 20s. for the collector.

<sup>2</sup> *Ibid.*, vol. iii, pp. 23, 88, 129, 189, 229; vol. iv, pp. 144, 469; vol. v, p. 310; vol. vii, p. 265.



the importing of liquors by land from the adjacent colonies, the collectors were authorized by the Assembly to collect the same duty on importations by land. This seems to have been done with the assistance of deputies, and was evidently effective, as no further reference to this matter is found in the acts of Assembly.<sup>1</sup>

A master of a ship or an importer making a false entry as to liquors was fined £100. A collector who connived at such fraud or accepted a bribe was fined £100, and was debarred from holding office connected with the customs. Any one who should bribe a collector was also to be fined £100. The granting to William and Mary College of a part of the revenue arising from the duty on liquors did not affect the relation of the collectors to it.

From 1699 to 1738 the collectors of the duty on slaves were appointed by the governor; they accounted with the treasurer of the colony, who in turn reported to the Assembly. These collectors were allowed at first six per cent, later ten per cent, for their services. When the duty was changed in 1732 to a percentage on the purchase price of each slave, the importer was required to pay the duty to the collector within forty days; if he failed to do this, he forfeited £5 for every slave on whom the duty had not been paid. A shipmaster making a false entry as to slaves imported was fined £100, and a collector who accepted a bribe and the one who offered it were each fined £100.<sup>2</sup> By 1738 every importer of slaves was constituted a collector, and the regular collectors were thus superseded. In most cases the importation of slaves was by water, but by this time some were brought into the colony by land, and those receiving them were of course required to pay the duty.<sup>3</sup>

<sup>1</sup> Hening, vol. iv, pp. 146, 470.

<sup>2</sup> Hening, vol. iii, pp. 193, 233, 346, 492; vol. iv, pp. 317, 472; vol. v, p. 28; vol. vi, pp. 218, 419, 466; vol. vii, p. 81; vol. viii, p. 532.

<sup>3</sup> *Ibid.*, vol. v, p. 28.

Should a person not a resident of the colony wish to obtain slaves to sell, he was required, whether they were imported by water or by land, to pay the duty to the naval officer, who accounted with the treasurer. Later, however, the seller of slaves was also empowered to receive the duty from non-residents, and to account with the treasurer.<sup>1</sup> As the purchaser within the colony was allowed forty (later thirty) days in which to make payment, the seller was required to furnish the treasurer with an account of each sale, together with the name of the purchaser and the price of the slave. If the seller took a promissory note, this was also handed to the treasurer, who thereupon informed the sheriff of the county in which the sale occurred, and he collected the duty. Thus by 1752 the seller, the treasurer, and the sheriff had really taken the place of the former collectors. The sheriffs accounted annually with the treasurer for the duty and received six per cent for their services. If the purchaser so desired, he might pay the seller, who accounted with the treasurer and received six per cent for his services. By 1759 it was found necessary to require every importer of slaves from the West Indies, Maryland, Carolina, or any other American colony to take an oath before the clerk of the county court of his county as to the slaves disposed of, and the clerk furnished the treasurer and the sheriff with this information.<sup>2</sup>

The duty on servants imported, laid in 1699 but not mentioned in the acts of Assembly after 1710, was received by collectors appointed by the governor. These officers were paid six per cent for their services, were stationed in the six revenue districts of the colony, and coöperated with the naval officers in preventing the evasion of the duty when ships landed. They accounted with the treasurer.<sup>3</sup>

<sup>1</sup> Hening, vol. vi, p. 217.

<sup>2</sup> *Ibid.*, vol. vii, p. 338.

<sup>3</sup> *Ibid.*, vol. iii, pp. 193, 197, 346, 492; *Journal House of Burgesses, 1702-1705*, pp. 59, 120.

The duties on liquors, on slaves (until 1738), and on servants (until discontinued) were received by one collector only in each of the six revenue districts of the colony, and not by three collectors. The methods of collecting these revenues have been discussed separately in order to make clear the changes which took place.<sup>1</sup> The duties on liquors, slaves, servants, and skins and furs were known as "Virginia duties" in contradistinction to the royal revenues.

The office of treasurer was one of the very earliest in the colony. Before 1624 the treasurer was appointed by the London Company, and from 1624 to 1691 by the king, his commission bearing the royal sign manual.<sup>2</sup> From April, 1691, he was appointed by the Assembly.<sup>3</sup> In case of emergency, however, the governor could make a temporary appointment until the next meeting of the Assembly.<sup>4</sup> Before 1691 the treasurer was usually a member of the Council, but after that date his interests were with the burgesses. After 1691 he was practically the agent of the House of Burgesses, and the representatives of the people were very jealous of keeping entire control of this office. He was independent of the auditor and the receiver-general, who were appointees of the crown. For a period of fourteen years (1677-1691), however, the office of treasurer was, from motives of economy, united by the governor and the Council with that of the auditor.<sup>5</sup> In the early part of the

<sup>1</sup> *Journal House of Burgesses, 1705-1706*, p. 160; *1710-1712*, pp. 270, 284; *1712-1714*, p. 38; *Va. Mag. Hist. and Biog.*, vol. xxi, p. 167.

<sup>2</sup> *Cal. St. P. Col., 1675-1676*, no. 346; *1677-1680*, nos. 320, 377, 738; *Va. Mag. Hist. and Biog.*, vol. xiv, p. 267; Stanard, p. 7.

<sup>3</sup> Hening, vol. iii, p. 92; vol. v, p. 64; vol. viii, p. 211; *British Museum, King's MSS.*, no. 205, p. 509; *Cal. St. P. Col., 1689-1692*, no. 2284; Stanard, pp. 42, 43, 45; *Journal House of Burgesses, 1659/60-1693*, p. 370.

<sup>4</sup> Hening, vol. iii, p. 198; vol. vi, p. 196; vol. viii, p. 212.

<sup>5</sup> This was during the period of royalist reaction, after the Cromwellian period, Blathwayt's *Journal*, vol. ii, p. 66; Hartwell, Blair, and Chilton, p. 61.

seventeenth century, and even as late as 1664, the duties afterwards assigned the receiver-general, such as receiving quit-rents and other royal fees and profits, were performed by the treasurer in addition to the usual services rendered by him.<sup>1</sup> From 1691 he was the appointee of the House of Burgesses, and for a period of sixty-seven years (1699-1766) the duties of the treasurer were performed by the speaker of the House.<sup>2</sup>

This close relation between the House of Burgesses and the treasurer resembled somewhat the position of the English chancellor of the exchequer in the House of Commons. The combination proved a failure, and upon the death in 1766 of John Robinson, who had served for a period of twenty-eight years, the offices were separated.<sup>3</sup> The House, on account of the opportunity for fraud afforded by the union of these offices, decided to separate them, but was not forced to do so by the British government. Dinwiddie complained of this dual office, but nothing seems to have been done to compel the House to make the change.<sup>4</sup>

<sup>1</sup> Hening, vol. ii, pp. 31, 83, 99.

<sup>2</sup> *Ibid.*, vol. iii, pp. 197, 199, 476, 481, 495; vol. iv, pp. 135, 142, 150, 433; vol. v, pp. 64, 173; vol. vi, p. 248, vol. vii, p. 466; vol. viii, p. 210.

<sup>3</sup> This was after the administrators of his estate had turned over to his successor £5607. 3s. 11d. due by him on the revenue from the duty on liquors and slaves, £2500 of money appropriated for the Indian trade, and returned treasury notes loaned on security, making a total of £100,761. As there were no banks in which to deposit the public funds, it was customary for the treasurer to lend the money to individuals. Robinson made bad loans to personal and political friends, and this seriously involved his estate. (*W. and M. Col. Quart.*, vol. xix, p. 228.)

<sup>4</sup> When the House sent Peyton Randolph to England in 1754 to protest against the pistole fee imposed by Dinwiddie, and when it granted him £2500 for his services and delegated him to appoint a regular agent for them in England, with an annual salary of £200, the treasurer-speaker agreed to pay these amounts out of the funds in his hands, notwithstanding the strong protest of Dinwiddie and the Council, *Dinwiddie Papers*, vol. i, p. 160.

The usual duties of the treasurer were to receive the revenues arising from the duties on liquors, servants, and slaves imported, from the public levy, and from any special levy raised by act of Assembly, and to borrow money on the authority of that body.<sup>1</sup> Before 1691 he was dependent upon royal order in disposing of the funds entrusted to him, but after that date he accounted to the Assembly for all money received by him, and paid it out by order of that body or by warrant issued by the governor. His account, after being approved by the Assembly and signed by the governor, was sent to the auditor-general of the colonies.<sup>2</sup> It was thus the policy of the British government to supervise the whole revenue system of the colony, although the funds handled by the treasurer were considered to belong to the province, and to be, therefore, not under direct royal control. He was empowered by the Assembly to emit treasury notes on special occasions, such as the preparation for the French and Indian War, when extra funds were needed.<sup>3</sup> He was directed to prosecute any one refusing to pay the duties usually received by him, and to force payment of the duties on liquors and slaves by compounding the penalties inflicted for refusal or neglect.<sup>4</sup>

An act of Assembly of November, 1645, provided that the quit-rents were to be applied first to the payment of the treasurer's salary of £500 a year, the surplus to be disposed of by the Assembly.<sup>5</sup> This was done with the approval of

<sup>1</sup> Hening, vol. iii, pp. 92, 495; vol. iv, pp. 135, 148, 433; vol. v, p. 173; vol. vi, pp. 195, 218; vol. vii, p. 466; Beverley, p. 197.

<sup>2</sup> Hening, vol. iii, p. 495; vol. vi, p. 195; *Cal. Va. St. P.*, vol. i, pp. 30, 74, 113; *Dinwiddie Papers*, vol. ii, pp. 490, 591; *Cal. St. P. Col.*, 1677-1680, nos. 320, 332, 737; Blathwayt, *Virginia Papers*, MS.

<sup>3</sup> Hening, vol. vi, pp. 467, 528.

<sup>4</sup> *Ibid.*, vol. iv, p. 473; vol. v, p. 336.

<sup>5</sup> *Ibid.*, vol. i, p. 306.



the British government, as the treasurer was then a royal official. After 1691, when the treasurer was appointed by the House of Burgesses, he was paid six per cent on the money passing through his office. This percentage was later reduced to five. By 1734 he was also being paid £50 a year, which was gradually increased to £150, for auditing and settling the accounts of the inspectors of tobacco. He was required to furnish a bond of £5000 sterling, which was by degrees raised to £100,000.<sup>1</sup> The governor was to state his approval of the security furnished by the treasurer and to administer the oath of office to him.

There was little in common between the office of lord high treasurer and that of treasurer of Virginia. Both officials, of course, were custodians of public funds, but as far as the administration of the two offices was concerned, there was not much similarity, except that previous to 1691 the treasurer of Virginia, like the lords commissioners for executing the office of lord high treasurer, was appointed by the king.<sup>2</sup>

The cultivation of tobacco was the principal occupation of the colonists, and notwithstanding the attempts of the British government to divert the attention of some of them from this to other products, tobacco continued to be raised.<sup>3</sup> When the British government did, however, make this effort, the plan was to encourage the colonists in the production of certain raw materials that would be of service to the government or could be utilized in some way in England. The raising of hemp and flax, and the shipping of naval stores, such as tar, masts and cordage, were especially encouraged, but it was not the purpose to permit any manufactures, and

<sup>1</sup> Hening, vol. iii, pp. 92, 476; vol. iv, pp. 135, 433; vol. v, pp. 64, 173; vol. vi, pp. 195, 248; vol. vii, pp. 33, 342, 467; vol. viii, p. 212.

<sup>2</sup> Anson, vol. ii, pp. 163-164.

<sup>3</sup> Bruce, *Ec. Hist. of Va.*, vol. ii, p. 413; *Wilmington Papers, 1675-1736*, MS.; Andrews, *Colonial Self-Government*, p. 317.

especially woolen goods, that would interfere with the English manufacturers and merchants. In 1622, 60,000 pounds of tobacco were shipped to England;<sup>1</sup> by about 1700, 40,000 hogsheads containing 27,200,000 pounds were exported from Virginia every year,<sup>2</sup> and in 1743 the amount exported was 35,000 hogsheads. It was estimated that in 1747 the colony exported about 45,000 hogsheads.<sup>3</sup> Warehouses, established by act of Assembly for the storage of all tobacco, whether for sale, for monetary purposes, or for export, were first built in 1632, and were always located conveniently to the wharves. They were privately owned, but were maintained at the public expense, the rent of them ranging from £5 to £50 a year. In 1742, in the case of most of them the rent was changed to eight pence on every hogshead of tobacco. In 1769 this was raised to ten pence.<sup>4</sup>

The inspectors of the tobacco which was brought to these public warehouses were at first members of the Council, who were assisted by the commissioners of monthly courts, but later were appointees of the governor.<sup>5</sup> By 1738 the county courts of the counties in which public warehouses were located recommended annually four suitable persons, from whom were selected two for each warehouse. The recommendation by the county court was not essential, for an appointment might be made by the governor without it.<sup>6</sup> There were usually two inspectors for each warehouse; in

<sup>1</sup> Bruce, *Ec. Hist. of Va.*, vol. i, p. 263.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 84.

<sup>3</sup> *C. O.* 5, 5, p. 202; Campbell, p. 444.

<sup>4</sup> Hening, vol. i, p. 204; vol. iv, pp. 254, 382, 479; vol. v, pp. 14, 145; vol. vi, pp. 177, 223, 352; vol. vii, pp. 245, 532; vol. viii, pp. 80, 324; *Journal Council of Va.*, MS., 1721-1734, pp. 449, 451; Webb, p. 330.

<sup>5</sup> Hening, vol. i, p. 211; vol. iv, p. 251.

<sup>6</sup> *Journal Council of Va.*, MS., 1721-1734, pp. 408, 471; Hening, vol. v, pp. 10, 11, 129; vol. vi, p. 159; vol. viii, p. 86; *Cal. Va. St. P.*, vol. i, p. 233; *Warwick County, Court Minutes*, p. 39.

1732 there were altogether seventy-one warehouses and one hundred and thirty-three inspectors, increased by 1765 to ninety-eight warehouses and one hundred and sixty inspectors.<sup>1</sup> By 1761 "additional" inspectors were appointed, who were to serve only when the two regular inspectors did not agree as to the quality of tobacco, or when one of them was absent, or when they brought their own tobacco for inspection.<sup>2</sup> The duties of the inspectors were to break open, "view and examine" all hogsheads of tobacco, to see if the tobacco was in good condition and "merchantable," to weigh it, and to stamp the hogshead.<sup>3</sup> They collected the special tax of two shillings on every hogshead of tobacco received at their warehouses, which was imposed at the time of the French and Indian War.<sup>4</sup> They were required to take an oath for the faithful performance of these duties, and to furnish the governor with a bond of £1000. This was reduced in 1742 to £200, but was increased in 1748 to £500.<sup>5</sup>

The salary of the inspectors was at first small, but from about 1680 to 1732 each received £60 a year. After 1732 it ranged from £25 to £70 a year, and was specified by act of Assembly for the several warehouses according to their importance.<sup>6</sup> After deducting their own salary, the rent of

<sup>1</sup> Hening, vol. iv, pp. 266, 334, 382; vol. v, p. 144; vol. vi, p. 175; vol. viii, p. 97; *Journal Council of Va.*, MS., 1721-1734, p. 440.

<sup>2</sup> Hening, vol. vii, p. 387; vol. viii, pp. 87, 89, 234.

<sup>3</sup> *Ibid.*, vol. iv, p. 251; vol. vi, p. 162.

*Ibid.*, vol. vii, p. 333; vol. viii, p. 110. This was in addition to the duty of two shillings on every hogshead, paid to the royal collectors at the ports.

<sup>5</sup> *Ibid.*, vol. iv, p. 261; vol. v, p. 130; vol. vi, p. 161; vol. viii, p. 88.

<sup>6</sup> *Ibid.*, vol. iv, pp. 262, 334, 385; vol. v, pp. 144, 325; vol. vi, pp. 175, 352, 473; vol. vii, p. 532; vol. viii, pp. 97, 323, 508. In 1755 and in 1758, on account of the small tobacco crops, the inspectors received instead of their usual salaries three shillings a hogshead on "crop tobacco," and five shillings on "transfer tobacco," *Ibid.*, vol. vi, p. 567; vol. vii, p. 244.

the warehouse, and incidental expenses, inspectors accounted annually with the treasurer, by whom the account was reported to the Assembly, for the inspection fee of five shillings paid on every hogshead by the person to whom it was delivered. They reported to the county court the disposition of all tobacco committed to their custody, and also made an annual report to the commissioners of the customs of all tobacco inspected, its disposal, if it was exported, by what ship, and by what naval officer it was despatched.<sup>1</sup>

Any one wishing to pay any public or private debt could get from the inspectors notes to the value of his tobacco in the warehouse. These notes, known as "crop notes" and "transfer notes," were used as legal tender. They were usually current only in the county where they were issued, but passed occasionally in an adjacent county provided the counties were not separated by a very wide river. They were payable on demand by the inspectors who signed them, within one year, after which time they were not legal tender.<sup>2</sup>

Inspectors while in office and for two years afterwards were ineligible to membership in the House of Burgesses, and could take no part in elections, under a penalty of £50. The reason for this is indicated in the preamble of the law passed in 1736: "Whereas divers inspectors have busied themselves in the election of burgesses, and used the power of their offices in influencing such elections, as well for procuring themselves, as others, to be elected, to the hindrance of the freedom of voting," and so on.<sup>3</sup> In the effort to

<sup>1</sup> Hening, vol. iv, pp. 252, 260; vol. v, pp. 125, 158; vol. vi, pp. 155, 190, 224; vol. viii, pp. 70, 82, 95, 324.

<sup>2</sup> *Ibid.*, vol. iv, pp. 251, 254, 386; vol. v, pp. 133-138; vol. vi, pp. 163, 168, 256, 475; vol. viii, pp. 90-104; Webb, p. 336. First mentioned in acts of Assembly of May, 1730.

<sup>3</sup> Hening, vol. iv, p. 481; vol. v, p. 153; vol. vi, p. 185; vol. vii, p. 529; vol. viii, pp. 95, 316.

prevent fraud on the part of inspectors, it was specified by an act of Assembly in 1738 that no inspector should be a collector of quit-rents or of any public, county or parish levies, or of any officers' fees.<sup>1</sup> This law was repealed in 1752, but reenacted in 1765.<sup>2</sup> That the colonists sometimes purchased this office may be inferred from the act of Assembly, passed in 1748, to prevent the buying or selling of the office of inspector, and fixing the penalty at £100 fine and ineligibility to the office.<sup>3</sup> It seems that it was necessary further to check the tendency toward fraud by enacting a law prohibiting an inspector from accepting any gift or gratuity other than his salary, under a penalty of £50. It was also provided that no inspector should buy, sell, or exchange any tobacco in his warehouse. In 1742 justices of the peace were empowered to visit warehouses to ascertain if the inspectors were faithfully discharging their duty, and to report any irregularity to the governor.<sup>4</sup>

That some planters evaded the law and disposed of their tobacco without having brought it to the public warehouse is evident from a law passed in 1738 requiring inspectors, sheriffs, and constables to take an oath in the county court to report to the justices of the peace all cases of such violation, or of tobacco carried to Maryland or North Carolina without a permit.<sup>5</sup> The master of every ship was required to take an oath before a naval officer that he would not permit any uninspected tobacco to be taken on board, under penalty of a fine of £20 and forfeiture of the tobacco. He was to furnish the naval officer with two manifests of all

<sup>1</sup> Hening, vol. v, pp. 11, 153; vol. vi, p. 185.

<sup>2</sup> *Ibid.*, vol. vi, 226; vol. viii, p. 95.

<sup>3</sup> *Ibid.*, vol. vi, p. 160; vol. viii, p. 87.

<sup>4</sup> *Ibid.*, vol. iv, p. 263; vol. v, pp. 154, 158; vol. vi, pp. 160, 185; vol. viii, p. 95.

<sup>5</sup> *Ibid.*, vol. v, pp. 13, 151; vol. vi, p. 183; vol. viii, p. 75.



tobacco on board, one of which was annexed to the clearance certificate to be delivered by the master of the ship to the customs official at his destination, and the other was sent to the customs official by the naval officer.<sup>1</sup>

The pilots of the ships on the larger rivers and Chesapeake Bay were appointed by the governor.<sup>2</sup> The act of Assembly of 1661 establishing a system of pilots was from time to time reenacted for periods of from three to seven years, and the governor was empowered to make appointments. By 1762 the county court of each of the maritime counties had been empowered to name three men, who examined all persons applying for positions as pilots and made the appointment.<sup>3</sup> The penalty for acting as pilot without a commission was a fine of £10 for the first offense, increased to £20 and £40 for second and third offenses.<sup>4</sup>

The duties of the pilots were to keep themselves in readiness to render the necessary aid in piloting ships on the rivers and the bay, and to provide beacons. For the latter service they were paid by the Assembly. For conducting a merchant vessel the pilot was paid the specified fees by the master of the ship, but in case of ships of war or other vessels of the British government, he applied to the Council for compensation.<sup>5</sup> The fees to be charged were specified by act of Assembly for every stretch of the rivers and the bay where guides were needed.<sup>6</sup> The services rendered by

<sup>1</sup> Hening, vol. v, p. 141; vol. vi, p. 157; vol. viii, p. 72.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, p. 139; 1705-1721, p. 100; *Cal. St. P. Col.*, 1689-1692, no. 1845; 1693-1696, no. 21.

<sup>3</sup> Hening, vol. ii, p. 35; vol. vi, p. 490; vol. vii, p. 580; vol. viii, pp. 197, 353, 542.

<sup>4</sup> *Ibid.*, vol. vi, pp. 490-493; vol. vii, p. 581.

<sup>5</sup> *Journal Council of Va.*, MS., Executive Session, Oct. 23, 1722.

<sup>6</sup> Hening, vol. ii, p. 35; vol. vi, p. 490; vol. vii, p. 580. From Cape Henry or Lynnhaven Bay to Hampton Roads or Sewell's Point, £1; Cape Henry to Smith's Point on Potomac River, £5. Other points on the bay, and on the James, York, Rappahannock, and Potomac Rivers are also mentioned, with the fees to be charged.

the pilots were recognized as quite valuable, especially those in connection with the merchant vessels, which were closely related to the revenue system of the colony.<sup>1</sup>

Before 1692 postal affairs in America were left to the colonies themselves, but with very unsatisfactory results. On February 17, 1692, Thomas Neal was authorized by letters patent under the great seal to have charge for twenty-one years of the administration of the postal affairs in all of the colonies on the mainland of North America and the adjacent islands. He did not personally perform the duties of this office, but nominated as his deputy Andrew Hamilton of East Jersey, who was commissioned by the postmaster-general of England in pursuance of a royal order. Andrew Hamilton commissioned Peter Heyman to serve as his deputy in Maryland and Virginia. Heyman presented his commission to the governor and Council of Virginia, whereupon a proclamation was issued to make known the royal pleasure and to assure Heyman of the coöperation of the colony.<sup>2</sup> The Council, with the House, passed an act<sup>3</sup> which acknowledged that the act of Parliament establishing the post-office was to be enforced in the colony, but it was not enforced for several years. There was objection to the royal postal system in the colony, and it was not until 1718 that the post-office was actually established in Virginia. Spotswood, in a letter to the Board of Trade of June 24, 1718, said: "The people were made to believe that the Parliament could not lay any tax (for so they call the rates of postage) here without the consent of the General Assembly." He also referred to the rates of postage as "this branch of the king's revenue."<sup>4</sup> One of the declared pur-

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 110.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, p. 135; *Sainsbury Papers*, 1691-1697, pp. 112, 147; *Virginia Gazette*, April 21, 28, 1738.

<sup>3</sup> Hening, vol. ii, p. 112.

<sup>4</sup> *Spotswood Letters*, vol. ii, p. 280.

poses of the new postal law of 1710, passed by Parliament, was to raise a war revenue, and a weekly payment of £700 had to be made to the royal treasury. The people of New England did not object to this regulation,<sup>1</sup> but the Virginians held that Parliament could not thus tax them without their consent. It seems, however, that this opposition gradually declined, for after 1718 they apparently raised no objection to the postal system on this ground.

The instructions to the governor informing him of the appointment of Neal stated that letters and parcels were to be transmitted "under such rates and sums of money as the planters shall agree to give, or as shall be proportionable to the rates for the carriage of letters ascertained in the act of Parliament for erecting and establishing a post office."<sup>2</sup> In March, 1692-3 the Virginia Assembly fixed the rates of postage; these became effective as soon as the colony submitted to the postal system, which was about 1718.<sup>3</sup> Mer-

<sup>1</sup> Greene, *Provincial America*, p. 41.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, p. 135.

<sup>3</sup> Hening, vol. iii, p. 112; *Regulations of the Colonial Post Office*, MS.

|  |      |
|--|------|
| Letter of one sheet, distance not over 80 miles .....  | 3d.  |
| " " two sheets, " " " " .....                          | 6d.  |
| " " one sheet, " over " " .....                        | 4d.  |
| " " two sheets, " " " " .....                          | 9d.  |
| Every additional sheet for any distance .....          | 5d.  |
| Writs, deeds, etc., per ounce, not over 80 miles ..... | 12d. |
| " " " " " over 80 miles .....                          | 18d. |

The rates were later increased as follows:

|   |         |
|---|---------|
| Letter of one sheet, distance not over 60 miles ..... | 4d.     |
| " " two sheets, " " " " .....                         | 8d.     |
| " " three sheets, " " " " .....                       | 1s.     |
| " " one sheet, " " " 100 " .....                      | 6d.     |
| " " two sheets, " " " " .....                         | 1s.     |
| " " three sheets, " " " " .....                       | 1s. 6d. |

From New York (main office in America) to Williamsburg (main office in Virginia):

chants' accounts, bills of lading, and bills of exchange were considered double letters, but this system of rates did not prevent merchants from sending letters by shipmasters. The official letters of the colony were, of course, exempted from postage. Writs of courts and letters which the writers preferred to despatch privately did not have to be sent through the post-office.

When the post-office was in actual operation in the colony, the irregularities were so pronounced that the Assembly passed an act complaining of them. It was charged that the postmaster, knowing that the post-office was at a great distance from many people, had taken possession of letters from masters of ships and kept them for several months. The commission to Neal had specified that he or his deputy should establish at Neal's expense post-offices in each county, but this was not done. It was also charged that the postmaster took from ships other letters, intended to have been delivered directly to the addressee and not to have passed through the post-office, and not only required postage for them, but also opened them and in some cases took money from them. The Assembly sought to remedy these irregularities by ordering masters of ships to furnish to the postmaster a list of letters, giving the address of each, to serve as a guarantee of their safe delivery. An authority on conditions in the colony, writing in 1724, said: "The last thing I shall mention with regard to the advantage of trade in Virginia is the absolute necessity of a better regulation of the post-office there, for the safe and quicker conveyance

|                           |         |
|---------------------------|---------|
| Letter of one sheet ..... | 1s. 3d. |
| " " two sheets .....      | 2s. 6d. |
| " " three sheets .....    | 3s. 9d. |

From New York to London:

|                           |     |
|---------------------------|-----|
| Letter of one sheet ..... | 1s. |
| " " two sheets .....      | 2s. |
| " " three sheets .....    | 3s. |

of letters.”<sup>1</sup> In 1738 ex-Governor Spotswood, then postmaster-general of the American colonies, improved the system by the use of stages. He arranged the longer routes in relays, so that one postman did not travel the whole distance, but was relieved at a certain point. This plan was adopted on the route between Williamsburg, Virginia, and Philadelphia. The stage route between Williamsburg and Edenton, North Carolina, furnished a monthly mail service.<sup>2</sup>

In addition to the usual duties of the postal service, the postmaster was to have been given the general supervision of the ferries.<sup>3</sup> The governor, on July 24, 1695, in calling the attention of the Council to the post-office, stated that it had not been put on a firm basis in the colony, nor had the ferries, which were vested in the postmaster. Hening's statutes covering the period from 1692 to 1775 show, however, that the ferries were established by the Assembly, that the fees were also fixed by this body, and that the ferry-keepers were appointed by the Assembly, and later by the county court.<sup>4</sup> Thus the royal power, represented by the postmaster, did not extend, as was evidently intended, to the ferries. The postal system of the colony, on the other hand, was under royal supervision, and the postmaster-general in England sent from time to time, in addition to the instructions to his deputy in the colony, certain directions to the governor, by whom reports were made regarding postal affairs to the lords of the treasury.<sup>5</sup>

<sup>1</sup> Jones, p. 150.

<sup>2</sup> *Virginia Gazette*, April 21-28, 1738.

<sup>3</sup> *Cal. St. P. Col.*, 1693-1696, no. 1975; *Sainsbury Papers*, 1691-1697, p. 147.

<sup>4</sup> Hening, vols. iii-viii. In 1705 there were 50 ferries, and in 1748 there were 110.

<sup>5</sup> *Cal. St. P. Treas. Papers*, 1697-1701, pp. 289, 513; *Sainsbury Papers*, vol. iii, p. 776; *Journal House of Burgesses*, 1702-1705, pp. 21, 52, 72.



The colonies were considered of importance only so far as they served the interests of the British government, and especially the interests of the English merchants, as was demonstrated by the frequent regulations regarding trade. That the colonies gave Great Britain material assistance seems amply demonstrated upon the authority of one whose position afforded him an opportunity to ascertain the actual returns from the colonies. A statement in 1707 to the lords of the treasury from William Blathwayt, the auditor-general of the colonies, asserted that the American colonies were the chief support of Great Britain.<sup>1</sup> The colony of Virginia was but one in the British colonial system, and from the British point of view was estimated very largely by the value of its exports to England.<sup>2</sup> The opinion of the British authorities of the relative wealth and importance of Virginia is shown in the apportionment of the assistance to be given by the colonies to New York. The royal instructions of May 19, 1732, to the governor of that colony stated that the assemblies of certain colonies had been directed to appropriate specified amounts toward the erection of forts on the New York frontier.<sup>3</sup> Virginia was assessed far more than any other colony. It was stated that the contributions should be "in proportion to the respective abilities of each plantation." It was also provided that in case of invasion of New York, the other colonies were to furnish troops.<sup>4</sup> Virginia was called on to furnish forty more men for the defense of New York than that colony itself was expected to supply.

<sup>1</sup> *Cal. St. P. Treas. Papers, 1702-1707*, p. 532.

<sup>2</sup> Andrews, *Anglo-French Commercial Rivalry, 1700-1750*, p. 542.

<sup>3</sup> Rhode Island and Providence, £150; Connecticut £450; Pennsylvania, £350; Maryland, £650; Virginia, £900 (*C. O. 5, 195*, p. 42).

<sup>4</sup> Massachusetts Bay, 350; New Hampshire, 40; Rhode Island, 48; Connecticut, 120; New York, 200; East New Jersey, 60; West New Jersey, 60; Pennsylvania, 80; Maryland, 160; Virginia, 240 (*C. O. 5, 195*, p. 42).

When Virginia became a royal colony in 1624, the British government proposed to assume the expense of the local governmental charges, including the governor's salary and the cost of defense against the Indians, which were to be met with part of the revenue on tobacco.<sup>1</sup> Shortly after his accession, Charles I also stated that the maintenance of all public officials in Virginia should be borne by the crown.<sup>2</sup> Until 1643 a part of the governor's salary was paid either directly or indirectly out of the royal exchequer, but from that date until about 1660 the whole salary was paid by the colonists directly by public tax. After that it was paid indirectly out of the duty on exported tobacco. Thus the assumption by the British government of the salary of the governor was invalid, except during the brief period indicated. As each of the officials of the colony is studied, it is observed that not only the provincial appointees, but also those holding royal commissions were either directly or indirectly paid by the colonists.

The British authorities, notwithstanding the declaration of their intention to bear the cost of defense against the Indians, left this matter very largely to the colonies, for it was in fact the established policy of the British government that in times of peace in Europe the defense of a colony against a local enemy should devolve primarily on the colony itself. This policy was departed from with reluctance.<sup>3</sup>

In 1688 the British government, deciding to leave the defense of the New York frontier to the colonies, directed that an appropriation of £600 be made by Virginia for this purpose. The House of Burgesses refused to make the appropriation requested.<sup>4</sup> In 1693 the governor and Council,

<sup>1</sup> Rymer, *Foedera*, vol. xvii, p. 669; Beer, *Origins*, p. 318.

<sup>2</sup> *Cal. St. P. Col.*, 1574-1660, pp. 73-74.

<sup>3</sup> Beer, *Origins*, p. 319.

<sup>4</sup> *Journal House of Burgesses*, 1659/60-1693, pp. 295, 298.

complying with the royal instructions, directed the auditor to furnish New York with £600. The House did not co-operate with the governor and Council, for, as the burgesses maintained, there was really no necessity for assisting New York, and in the resolution adopted it was stated: "This government never had any protection from or dependence upon any other place, but have always made it their care, as much as in them lay, effectually to provide for their own defense."<sup>1</sup> At that time Virginia was at the expense of keeping troops on her own frontier, as there was reason to fear an attack from Indians. Again, in 1695 the governor was instructed further to aid New York to the amount of £500. In an address to the governor the burgesses insisted that in view of the taxes and other expenses then borne in order to protect the frontier of Virginia, the colony should not be expected to aid New York. They maintained that Virginia had never received assistance, and added:

to which opinion they are the more induced, by this further consideration, that as this country always has in its greatest necessities, borne its own charge, without any assistance from other places, and by means thereof, is reduced to a lower ebb and degree of want, so now it must by the forces and assistance lodged within itself, be its own defense and guard.

When the importance of the matter was strongly urged, the Assembly appropriated £500, to be raised by a special duty on imported liquors, but requested that the king would not again make such an assessment. Nicholson, in a letter (June 28, 1699) to the Bishop of London, stated that Sir Edmund Andros (governor 1692-1698) sent to New York £269 4s. 7d. on order from the British government. This was in addition to the appropriation made by the Assembly, and was no doubt taken out of the quit-rents the surplus of

<sup>1</sup> *Journal House of Burgesses, 1659/60-1693*, pp. 482, 483.

which then in the hands of the auditor amounted to £2061 19s. 3d. Virginia, in defending her own frontier at this time, spent £473 appropriated by the Assembly and £665 out of the quit-rents on the fortifications.<sup>1</sup> Notwithstanding the request made of the home government, the colony was called on in 1701 for an additional appropriation of £900 for the same purpose. When the Assembly refused to grant it, the governor (Nicholson) offered to advance the money, with the understanding that he would be refunded out of the quit-rents, but it seems that the money was not needed.<sup>2</sup>

In a circular letter of November 24, 1698, the lords of the treasury directed the governors of Virginia, New England, New York, Jamaica, Barbadoes, and the Leeward Islands to give credit to Admiral Benbow and his squadron in the West Indies, and to furnish him with money to the amount of £3000 for provisions and other expenses. Virginia was to furnish £500 of this amount.<sup>3</sup> In a letter of credit from the lords of the treasury under date of August 8, 1701, Admiral Benbow was authorized to call upon the governors of Virginia, Massachusetts Bay, Barbadoes, and Jamaica to the amount of £5000, of which Virginia would be expected to furnish £2000. In this later letter, certain colonies mentioned in the letter of 1698 were thus omitted and the amount to be advanced increased. The governors were to accept bills of exchange for the amounts advanced, certify and forward them to the commissioners of the navy for payment. The squadron of ships of war under Admiral Benbow was sent to the West Indies for the protection of the British colonies.<sup>4</sup>

<sup>1</sup> *Fulham MSS., Virginia*, 2nd box no. 102.

<sup>2</sup> *Cal. St. P. Col., 1701*, no. 1040; *Journal House of Burgesses, 1695-1696*, pp. 16, 35, 37; *1702-1705*, pp. 16, 20.

<sup>3</sup> *Plantations General*, vol. iv (2), p. 146.

<sup>4</sup> *C. O.* 324, 6, p. 435; 8, p. 18.

When military supplies, amounting in value to £3388, were sent to Virginia in 1702, the governor was instructed to "forthwith cause the said sum" to be paid out of the quit-rents and to be transmitted by bills of exchange to the treasurer of the ordnance office. Colonel Robert Quarry, surveyor-general of the customs, in a letter to the Board of Trade (October 15, 1703) regarding affairs in Virginia, gave an account of the financial condition of the colony "after having paid for the arms and ammunition."<sup>1</sup> Thus in addition to refunding the cost of these supplies, the members of the militia to whom any of these supplies were issued were required to pay for them, and the money arising from such sales, in accordance with the directions of the British government, was kept by the receiver-general as a royal reserve fund to be used for the service of the colony.<sup>2</sup>

The colony not only paid for its own defense, but volunteered to make an appropriation for an adjacent colony which was being disturbed by Indians, although the financial condition of Virginia would hardly justify it. In an address to the governor of December 21, 1711, the House of Burgesses, commenting on the appropriation for the assistance of North Carolina, said:

Nothing less than the deplorable state of our distressed fellow subjects of North Carolina, joined with the just apprehensions we have of the dangers hanging over our heads from the common enemy, could ever have prevailed with this house to have made a resolve to raise £20,000, at a time when our staple commodity will hardly afford necessaries for the support of the people, and our present funds have proved in great measure deficient.<sup>3</sup>

<sup>1</sup> C. O. 324, 8, p. 311.

<sup>2</sup> Blathwayt's *Journal*, vol. ii, p. 116; *Journal Council of Va., MS.*, 1689-1703, p. 157; C. O. 324, 4, pp. 46-50.

<sup>3</sup> *Journal House of Burgesses, 1710-1712*, p. 344.



In 1715, also, one hundred and fifty men were sent from Virginia to aid South Carolina during an Indian war in that colony.<sup>1</sup> South Carolina paid each soldier £4 a month in Carolina money, but the Virginia troops were not satisfied with the compensation in view of the service rendered, for their assistance, according to Governor Spotswood and the Board of Trade, was very effective in preventing a more disastrous war.<sup>2</sup>

In 1732 the British government again called upon the colonies to help New York, and assessed Virginia £900 for the erection of forts on the New York frontier, and requested her, in case of invasion, to furnish two hundred and forty men.<sup>3</sup> Virginia had supported New York on a previous occasion, but did not at this time comply with the royal instructions.

In 1740 the colonies were called upon to furnish soldiers to coöperate with the regular British troops in an offensive war against the Spaniards in the West Indies. Governor Gooch and four hundred men went from Virginia to join the regulars at Jamaica, and proceeded thence to attack Carthagena, on the northern coast of South America. The Assembly, "desirous to give the utmost testimony of their loyalty and affection to his majesty's person and government," appropriated £5000 for the expedition, and as this amount exceeded the funds in the treasury, a large part of it was loaned by individuals. In addition to this appropriation, the Assembly provided for £500 to be raised by a special duty on imported slaves, which was to be used for the support of the soldiers while waiting to embark, for those who might be wounded in the campaign, and for the

<sup>1</sup> *Journal Council of Va., MS., 1705-1721*, p. 241.

<sup>2</sup> *C. O. 5, 1293*, pp. 35-37, 105, 106, 110; *Spotswood Letters*, vol. ii, p. 136.

<sup>3</sup> *C. O. 5, 195*, p. 42.

families of those who might be killed. In the act providing for this appropriation it was stated that the colony was thus "to provide for and defray the expense of victualling and transporting the said soldiers, and all other incident charges attending the enlisting of them (except their pay, clothes, arms and ammunition), till their arrival at the general rendezvous in the West Indies." The British government could not, of course, expect Virginia to do more than furnish these soldiers and pay the expense of transporting them to Jamaica. As the results of the expedition, even though successful, could have only an indirect effect on Virginia, it would have been unjust to require the colony to bear the expense after the soldiers reached Jamaica. This was an unusual campaign in that the provincial troops were not only to leave their own colony, but were also to leave the mainland of America in the interest of Great Britain. It was therefore to be expected that the British government would depart from its policy in regard to leaving the matter of local defense to the colonies themselves, and assume the expense of the campaign after the troops reached Jamaica.

Though the pay of the colonial troops and their clothes, arms and ammunition were to be furnished by the British government, it was fully two months after the arrival at Jamaica before any effort was made to provide for them. While waiting for Lord Cathcart, who was expected to bring funds from England, a loan of £2000 was negotiated with merchants in Jamaica, which, however, was only sufficient for the officers.<sup>1</sup> Immediately after the expedition, upon request from Georgia for assistance against the Spaniards, who were threatening that colony, Virginia sent troops there, in spite of the fact that there were apprehen-

<sup>1</sup> *Cal. St. P. Treas. Books and Papers, 1742-1745*, pp. 19, 321; *C. O. 5, 41*, pp. 25, 106-108, 110-112; Henning, vol. v, pp. 92, 121.

sions of a Spanish invasion of Virginia, of an Indian attack, and also of slave insurrections within the colony.<sup>1</sup>

In 1745 Virginia coöperated with England in her preparation for the intended invasion of Canada by responding to the request of Governor Shirley, and by sending £1273 11s. 2d. to Cape Breton for provisions for the garrison.<sup>2</sup> When the mobilization was begun the next year, the British government requested the American colonies to furnish five thousand men.<sup>3</sup> Virginia appropriated £4000 toward raising her quota of troops, and £600 for provisions and quarters for British soldiers bound for Canada, but compelled to stop in Virginia on account of storms. This was a war begun by the British government and not by the colonists, and was a war of conquest and not one primarily of self-defense. It was a struggle between England and France; therefore the British authorities did not expect the colonists to bear all of the expense. The provincial troops were to be paid from the British treasury and their arms and clothes furnished to them. It was necessary, however, for the treasurer of Virginia to borrow a sum not exceeding £4000 in order to put the troops raised by the colony in readiness, and the arms kept in the public magazine were used in order to hasten the mobilization of troops at Albany. The pay and subsistence of the Virginia troops amounted to £2076 4s. 8d.<sup>4</sup> Gooch was appointed brigadier-general in command of the troops to be raised by Virginia, Maryland, Pennsylvania, New Jersey, and New York, but declined to serve.<sup>5</sup>

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. xvii, p. 43.

<sup>2</sup> *Journal Board of Trade*, vol. liv, p. 25.

<sup>3</sup> *C. O.* 5, 45, pp. 215, 242.

<sup>4</sup> *Ibid.*, 5, 45, p. 2; 324, 13, pp. 5, 165; Hening, vol. v, p. 401; *Journal House of Burgesses, 1742-1747*, pp. 221, 231; 1748-1749, pp. 265, 268.

<sup>5</sup> *C. O.* 5, 45, pp. 239-242.

In 1757 South Carolina was again at war with the Indians, and four companies were sent from Virginia in response to her call for help.<sup>1</sup> In these several instances Virginia rendered assistance to the adjacent colonies with no expectation of reimbursement by the home government.

Just before the beginning of the French and Indian War the British government evidently intended to continue to considerable extent the policy of leaving the colonies to defend themselves except in the case of so serious a matter as the threatened invasion from Canada. The Albany Congress (1754) was in full accord with that policy, as it was an effort to form a union of the colonies in order to provide a more adequate system of defense at the expense of the colonies and not of the British exchequer. When the British government sent £20,000 to Governor Dinwiddie for the defense of Virginia in 1754, it was not to be considered as an indication of a decided change in that policy. The colony did not depend solely upon this royal appropriation, for the Assembly provided by special taxation for the war.<sup>2</sup> This sum was in fact a loan, and was to be refunded, as is shown by a letter of July 3, 1754, from the secretary of state to Dinwiddie:

<sup>1</sup> *Journal House of Burgesses, 1756-1758*, p. 427.

<sup>2</sup> The appropriations made by the Assembly from 1754 to 1759 and the methods of taxation were as follows:

February, 1754, £10,000; October, 1754, £20,000; May, 1755, £6,000; August, 1755, £40,000; March, 1756, £25,000; November, 1759, £10,000. These amounts were to be raised by the following methods: special poll and land taxes, additional duties on slaves imported and tobacco exported, a tax on carriages, ordinary license, and processes at law, and by a lottery. While waiting for the collection of these special war taxes, the treasurer borrowed money, usually at six per cent, or issued "treasury notes," which were legal tender. Between 1755 and 1763 the paper money issued amounted to £539,962. Hening, vol. vi, pp. 417, 435, 453, 461, 521; vol. vii, pp. 9, 163, 331; *W. and M. Col. Quart.*, vol. xx, pp. 227, 261.

Whereas the duty of two shillings per hogshead upon tobacco, is applicable to the contingent expenses of our government there, our will and pleasure is, and we do hereby direct, authorize, and command you, to issue your warrant, from time to time, for paying over the balance of the money in the receiver's hands of the said duty, and such other sums, as shall hereafter appear to be the balance in his hands thereof, as far as the sum will go, unto our right trusty and well beloved William Pitt, paymaster-general of our forces, to reimburse and make good the said sums of £10,000 so sent over in specie, and £10,000, so to be advanced on the credit of your bills.<sup>1</sup>

Thus the colony, although in debt, was required to reimburse the British exchequer. In the address of the Council of Virginia to the king on November 16, 1754, which thanked him for the above appropriation, it was stated that "the extraordinary supplies necessarily raised in the late war, and upon this occasion, have involved us in a debt, which all our funds, at present, are not able to satisfy."<sup>2</sup>

Dinwiddie complained to the secretary of state of the inadequacy of the revenue from the duty on tobacco of two shillings per hogshead, and begged that the royal order to reimburse the British exchequer for the £20,000 loaned to the colony might be temporarily suspended until the expedition against the French and Indians could be completed and the treasury replenished.<sup>3</sup> In a letter of June 6, 1755, from Dinwiddie to the Board of Trade it is shown, however, that some of this revenue was sent to England.

Agreeable and in obedience to his majesty's commands, I have transmitted my warrant to the paymaster-general, for £2,000, payable by Mr. John Hanbury, from the revenue of two shil-

<sup>1</sup> *C. O.* 5, 211, pp. 77, 91.

<sup>2</sup> *Ibid.*, 5, 15, p. 21.

<sup>3</sup> *Dinwiddie Papers*, vol. i, p. 353.



ling per hogshead on tobacco in this colony, that is the only one, I have recourse to for payment of any emergencies of government. I, therefore, have left the small sum of £767, 15s., 6d. in the receiver-general's hand.<sup>1</sup>

In 1755, in addition to Braddock's expedition, three other military enterprises were undertaken — the campaign in Nova Scotia, the expedition against Niagara, and that against Crown Point, the last being purely a colonial undertaking. The Board of Trade estimated the expenses of the colonies in these expeditions at £170,100, and recommended that Parliament grant them £120,000 "as an encouragement to exert themselves for the future in their mutual and common defense."<sup>2</sup> Parliament, however, granted £115,000 to the northern colonies, which practically covered their expenses, but nothing to the southern colonies until Virginia and North Carolina protested against the discrimination. The next year (1757) Virginia, North Carolina, and South Carolina received £50,000, of which amount Virginia received £32,269.<sup>3</sup> James Abercromby, solicitor of Virginia affairs, stated that that colony alone between 1753 and 1756 spent £100,000 sterling, although the Board of Trade estimated that only £22,000 was appropriated by Virginia for the above expeditions.<sup>4</sup> After the appropriations made in the colonies in 1758, Parliament voted the next year £200,000 to reimburse them, of which

<sup>1</sup> *C. O.* 5, 15, p. 585.

<sup>2</sup> New York, £18,900; New Jersey, £6,900; New Hampshire, £9000; Massachusetts, £60,000; Connecticut, £29,000; Rhode Island, £8000; Maryland, £4,500; Pennsylvania, £3,800; North Carolina, £8000; Virginia, £22,000 (*C. O.* 324, 15, pp. 208, 212; Beer, *British Colonial Policy*, p. 53).

<sup>3</sup> 29 George II, c. 29; 30 George II, c. 26; Hening, vol. vii, p. 372; *Journal House of Burgesses, 1758-1761*, p. 184.

<sup>4</sup> Beer, *British Colonial Policy*, p. 53.

amount Virginia received £20,546.<sup>1</sup> Similar appropriations were made in subsequent years throughout the entire war.<sup>2</sup> By these appropriations the British government was partially reimbursing the colonies for their help in meeting an emergency which, without the assistance of provincial troops, could not have been so successfully met. The British authorities were anxious to encourage the raising of colonial troops, as this plan rendered it less necessary to raise troops in England, and also saved the heavy cost of transporting them, as well as the regulars, from England.

Before the plan to reimburse the colonies was adopted, it was difficult to secure sufficient coöperation from all of them. It was thought by some that the colonies should be forced to coöperate with each other and to assume a proportionate share of the expense of the necessary military establishment. Dinwiddie wrote to the secretary of state on February 12, 1755, and suggested that if they would not coöperate Parliament might lay a special tax on them for this purpose.<sup>3</sup> As soon, however, as they were assured of reimbursement, they were generally more favorable to the war. Massachusetts, Connecticut, and New York, according to Beer, showed throughout the war more public spirit than any other colonies.<sup>4</sup> The share of the expense of the war borne by Virginia was £385,319, which was the next largest debt to that of Massachusetts—£818,000.<sup>5</sup> It would seem, therefore, that Virginia, while not appropriating as much as Massachusetts, showed more public spirit in this

<sup>1</sup> Hening, vol. vii, p. 372; *Journal House of Burgesses, 1758-1761*, pp. 172, 184.

<sup>2</sup> 1759, £200,000; 1760, £200,000; 1761, £200,000; 1762, £133,333; 1763, £133,333 (32 George II, c. 36; 33 George II, c. 18; 1 George III, c. 19; 2 George III, c. 34; 3 George III, c. 17).

<sup>3</sup> *Dinwiddie Papers*, vol. i, pp. 493, 496.

<sup>4</sup> Beer, *British Colonial Policy*, p. 58.

<sup>5</sup> *Plantations General*, vol. xxii, p. 18.

respect than Connecticut or New York. Virginia should not be included with the other southern colonies in the rebuke by Pitt for their "want of zeal." Sir Jeffrey Amherst, commander-in-chief of the army, in a letter to Governor Fauquier of Virginia, sent from New York under date of September 24, 1762, commended the colony for promptness in raising the troops requested, and said that it deserved special thanks from the king. He stated that

the colony of Virginia should be the first that claims that high honor. The ready compliance of your Assembly in making the necessary provision for both the requisitions of his majesty and the zeal and spirit particularly exerted in completing the quotas of men demanded for the regular corps, are strong proofs of the loyalty of the colony in general, and of the great regard they pay to his majesty's commands.<sup>1</sup>

Although Parliament made the appropriations mentioned, they were inadequate to reimburse the colonies fully. The total expense of Massachusetts and Virginia was £1,203,319, and the total amount appropriated by Parliament was £1,036,666 for all the colonies. The colonies were refunded about forty per cent, or two-fifths, of their expenditures for this war.<sup>2</sup>

In this connection it may be well to mention briefly the ordinary expenses of the colony. While the policy of Great Britain was to throw upon the colonies the responsibility of meeting their own expenses, in the case of Virginia it became necessary, on a few occasions, to request an appropriation from the quit-rents for the usual governmental charges. In 1699, for example, Virginia was not self-supporting without the use of the royal quit-rents, as the other revenues were not sufficient to meet the ordinary ex-

<sup>1</sup> *C. O.* 5, 62, p. 575.

<sup>2</sup> Beer, *British Colonial Policy*, p. 57.

penses.<sup>1</sup> A royal order was issued to the governor (Nicholson) authorizing him to appropriate £2955 9s. 8½d. of the quit-rents for this purpose.<sup>2</sup> By 1700, however, Nicholson had succeeded in bringing the colony out of debt, and was praised by the Board of Trade for this service.<sup>3</sup> By the end of the year 1702 he reported £10,000 to the credit of the colony, and in 1705 the deposits amounted to £7698. But by 1715 the colony was not self-supporting without using the quit-rents, permission for which was granted by the king upon a petition of the Assembly as well as a request from the governor.<sup>4</sup> As the usual revenue of about £4000 was thus again insufficient for the salaries of the officers of the colony, which aggregated at that time £3377 a year, besides the other ordinary and special expenses, £300 was appropriated out of the quit-rents.<sup>5</sup>

In 1717 Spotswood informed the Board of Trade that the revenue from the duty on tobacco of two shillings per hogshead lacked £1973 10s. 4d. of being enough to finish paying the salaries and the usual expenses for the preceding year, which amounted to £3500, and he requested that the necessary warrant be issued authorizing him to make up the deficit out of the quit-rents. These were held by the receiver-general, and amounted to £3766 1s. 4d.<sup>6</sup> According to a statement in the *Calendar of Treasury Books and Papers*,<sup>7</sup> Virginia and New York were the "only colonies in which the quit-rents are accounted for the crown." Since

<sup>1</sup> *Cal. St. P. Col.*, 1696-1697, p. 465, no. 967.

<sup>2</sup> *Ibid.*, 1699, p. 309; *Executive Papers*, MS., 1693-1699.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 113.

<sup>4</sup> *Cal. St. P. Treas. Papers*, 1708-1714, p. 573; 1714-1719, p. 159.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 121; *Sainsbury Papers*, vol. iii, p. 461.

<sup>6</sup> *Spotswood Letters*, vol. ii, p. 247.

<sup>7</sup> 1731-1734, no. 201.

this was the case, and also since the quit-rents were paid by the colonists, it was very reasonable that they should expect the British authorities to consent to the use of this revenue for the regular expenses of the government of the colony. By about 1760 the annual expenses of the colony were estimated by the British government at £8000. The two shillings per hogshead revenue amounted at this time to £7000.<sup>1</sup>

In 1756 Dinwiddie stated in regard to the resources of Virginia and the revenues actually collected that "this Dominion pays more to the crown than all the others."<sup>2</sup> The surveyor-general of the customs for the southern district of America, in his report of 1743 to the Duke of Newcastle, one of the principal secretaries of state, said that the value of goods shipped annually from Great Britain and Ireland to Virginia was £180,000, and that the value of the exports from Virginia (including wheat, Indian corn, pork, skins, furs, lumber, iron, and thirty-five thousand hogsheads of tobacco) was £380,000 a year—total import and export trade of £560,000.<sup>3</sup> The trade of the colony, which was largely with Great Britain, was estimated about 1740 by Gooch at £434,000 annually, £300,000 of which was in tobacco.<sup>4</sup> Governor Howard stated to the lords of trade in 1683 that the revenues from Virginia exceeded those of all the other colonies combined.<sup>5</sup> This prosperous condition of the colony existed earlier also, for Giles Bland, collector of the royal revenues in Virginia, writing in 1676 to Sir Joseph Williamson, referred to the "yearly revenue of more than £100,000, which Virginia affords to his majesty."<sup>6</sup> Sir

<sup>1</sup> C. O. 5, 216, pp. 8, 121.

<sup>2</sup> *Dinwiddie Papers*, vol. ii, p. 437.

<sup>3</sup> C. O. 5, 5, ff. 200-203; 38, app. no. 3.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 123.

<sup>5</sup> *Cal. St. P. Col.*, 1681-1685, no. 1273.

<sup>6</sup> *Ibid.*, 1675-1676, no. 906; 1677-1680, no. 304.



John Knight, writing to the Earl of Shaftsbury in October, 1673, stated that the British customs duties paid by Virginia on tobacco alone amounted to £150,000 a year.<sup>1</sup> Sir Henry Chicheley, in presenting in 1673 a petition from the governor and the Assembly of Virginia to the king for military supplies, stated that the claim of the colony was based on the fact that Virginia furnished a larger annual revenue to the crown by customs than any other plantation in the British dominions.<sup>2</sup>

Although the colony did not always administer its government without incurring expenses which could be met only by the use of the quit-rents, yet the prosperity of the colony and its importance to Great Britain were unquestioned, and the royal customs were collected fairly regularly, and the quit-rents sent to the royal exchequer. When the British government made an appropriation to relieve the embarrassment of the colony, it was usually out of the quit-rents, which had been collected but not forwarded to England. These revenues, and also the revenue from the duty of two shillings per hogshead on exported tobacco, which was used for paying the salaries of the officials, were of course raised by the colonists. Although these were considered to belong to the king, the colonists themselves were, after all, maintaining the government of the colony. Regarding the adequacy of these revenues, the Board of Trade stated in its report on Virginia in 1767 that the two shillings per hogshead and the quit-rents "form an ample and sufficient fund for the payment of the civil establishments of this colony."<sup>3</sup>

Notwithstanding the frequent evasion of the revenue duties, there was, as has been shown, a large sum paid dur-

<sup>1</sup> *Cal. St. P. Col.*, 1669-1674, no. 1159.

<sup>2</sup> *Ibid.*, no. 1118.

<sup>3</sup> *C. O.* 5, 67, p. 585.

ing the whole colonial period on imports and exports and in quit-rents. Much of this was sent to the British exchequer, and therefore was not used either directly or indirectly in the interest of the colony. The quit-rents were usually sent to England, regardless of the financial condition of the colony. In some cases, however, as has been pointed out, a portion of this royal revenue was permitted to be retained for the expenses of the colony. Had the British government paid the governor's salary, maintained the military system, and allowed all of the revenues raised in the colony to be kept for the use of the colony, there would have been, of course, no occasion for assistance. The colony was more than self-supporting, for, with the few exceptions noted, the expenses were met, the quit-rents were forwarded to England, and when aid was necessary funds were appropriated by royal permission from the quit-rents, which were raised by the colonists themselves. The colonists not only maintained the royal government in Virginia, but also furnished troops and money to conserve British interests in the other colonies. These appropriations were, moreover, not confined to the colonies along the Atlantic coast, but were made for expeditions against Canada and the northern coast of South America.

There was, in addition to the revenues which were used for the maintenance of the royal government, a system of provincial revenues raised for local purposes, such, for example, as the public, county, and parish levies, and the duties on liquors, slaves, skins, and furs. These provincial revenues seem usually to have been adequate to meet the ordinary expenses for which they were raised. In the case of so great an emergency as the French and Indian War, the public levy was much increased by the extraordinary demands of the situation. It was not only self-protection, but also the conservation of British interests that influenced the

Assembly to increase the appropriations from these revenues during that war.

In the study of the actual administration much attention has been devoted to the officials concerned with collecting and expending the revenues. There were in the eighteenth century, when the revenue system was well established, about twenty royal officials concerned with the royal revenues, which were either used in the colony or sent to England, and, including the inspectors of tobacco and the sheriffs, about one hundred and fifty provincial officials, who were concerned with the revenues used for the support of the government and for purely local purposes. The classification of the revenue officials into royal and provincial cannot be strictly followed, as there was some duplication of office which makes such a classification unsatisfactory without detailed explanation. In the case of the sheriffs, for example, both royal and provincial functions were performed. The sheriffs were appointed and commissioned by the governor largely for the performance of duties related to the judiciary; at the same time they were, to some extent, royal revenue officers, for they collected the quit-rents, which were the one source of revenue above all others that was regarded as royal. Generally speaking, however, the total number of royal, as compared with provincial officials, as given above may be accepted as approximately correct for the eighteenth century. The royal officials were appointees of the British government, and held commissions from the commissioners of the customs or some other British official, while the provincial appointees were commissioned by the governor or, as in the case of the treasurer, elected by the House of Burgesses. The appointees of the governor were, strictly speaking, semi-royal officials, since the governor himself held a royal commission, but they were usually considered provincial.

It is difficult to ascertain which officials were more faithful in the discharge of their duties, but the evidence seems to be in favor of the provincial officers. There were frauds in the revenues throughout the colonial period, and, no doubt, there were evasions of the provincial revenues, but the irregularities in the quit-rents and the royal customs, both as to payment and to collection, were often complained of, not only in the colony, but also by the British government. In certain cases the officials were wholly responsible, and were themselves guilty of fraudulent practices, while in others the system of exchange and credit in trade made it possible for the planters to evade the most vigilant revenue officer.

Notwithstanding the heavy demands made upon the revenues and the frequent frauds and evasions connected therewith, the financial system was, as has been shown, adequate for meeting the expenses of the administration of the colony, and also for conserving, to some extent, the interests of Great Britain beyond the limits of the colony. The controversy between the colonists and the British government which culminated in revolution was the result of a persistent interference with the financial and economic affairs of the colony which was considered oppressive and unjust.

## CHAPTER VII

### THE JUDICIAL SYSTEM AND ADMINISTRATION <sup>1</sup>

THE Assembly was the supreme court of the colony until near the close of the seventeenth century. The first day of every session was devoted to hearing indictments made by grand juries, and to inquiring into the judicial methods and into any abuses practiced by judges or juries.<sup>2</sup> Appeals lay from the General Court to the Assembly, until 1680, when Culpeper, taking advantage of a dispute between the Council and the House, secured a royal order forbidding such appeals. Thereafter the General Court was the highest tribunal in the colony, and appeals lay from it to the king.<sup>3</sup>

The Council sitting in its judicial capacity constituted the General Court. One of the criticisms against the personnel of this court was that those who composed it held the most important offices of trust and profit then in the upper house of the Assembly, legislated on matters affecting those offices, and in executive session examined their own accounts, and then sat in judgment upon cases in which they themselves were interested. They were, according to royal instructions, forbidden to sit on the same case, both in a

<sup>1</sup> It is not intended that this chapter should give an exhaustive account of the judicial system of the colony. It is intended to show how far royal authority affected the courts, and to treat at some length, the officials concerned with the judiciary who have not heretofore been treated in any adequate manner, if at all.

<sup>2</sup> Hening, vol. ii, p. 108; Chitwood, p. 20.

<sup>3</sup> *Journal House of Burgesses, 1659/60-1693*, pp. 162, 196; Instructions to the governors.



lower court and also in the General Court to which it was appealed, with the result that after about 1700 councillors seldom sat in county courts. The General Court developed by custom, and its members were never commissioned especially as judges.<sup>1</sup> This court, any five of its members constituting a quorum, met twice a year, in April and October, and was presided over by the governor.<sup>2</sup> It was supreme in all cases in chancery, king's bench, common pleas, exchequer, admiralty and ecclesiastical matters, and no appeal was allowed but to the king in Council.<sup>3</sup> Only cases involving £100, gradually increased to £500 sterling, were to be appealed to the king, and the appellant was required to furnish security to pay the cost should the General Court be sustained. An exception was made in the matters relating to some duty, fee, or rent, payable to the king, in which cases appeals were allowed, although they involved less than the above amount, and in cases of fines for misdemeanors appeal was to be permitted provided the amount involved was £100 or over.<sup>4</sup> The General Court had original jurisdiction in all cases of above £16 sterling and heard appeals from the county courts.<sup>5</sup> The county courts were at first held three times a year, later monthly, and appeal therefrom lay to the General Court in cases of £10 sterling, and in cases of less value to the Assembly.<sup>6</sup> There was, until 1748, no limit as to the amount in cases appealed from the county courts to the General Court. In

<sup>1</sup> Hartwell, Blair, and Chilton, p. 32.

<sup>2</sup> Hening, vol. v, p. 468; *Va. Mag. Hist. and Biog.*, vol. iii, p. 115; *Dinwiddie Papers*, vol. i, p. 383; Jones, p. 29.

<sup>3</sup> Hartwell, Blair, and Chilton, p. 32.

<sup>4</sup> *Journal Board of Trade*, vol. iii, p. 340; *Journal House of Burgesses*, 1659/60-1693, pp. 203-204, 229; Instructions to the governors.

<sup>5</sup> Hening, vol. ii, p. 65; vol. iii, p. 299; vol. v, p. 482.

<sup>6</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 115; *Dinwiddie Papers*, vol. i, p. 383; Bruce, *Instit. Hist. of Va.*, vol. ii, p. 497.

the instructions to the governors after 1700 they were directed to limit such appeals, but it was not until 1748 that the act for this purpose was passed requiring that such appeals would be allowed only in cases involving as much as £10.

The court of oyer and terminer, held in June and December, tried criminals imprisoned after the adjournment of the General Court. Only councillors sat as judges in this court, and were commissioned by the governor for this service.<sup>1</sup> In addition to the courts mentioned there was, in certain larger towns, a magistrate's court.<sup>2</sup> There was also a court of vice-admiralty, appeal from which lay to the High Court of Admiralty or to the king in Council.<sup>3</sup>

The right of *habeas corpus* was first granted in the instructions to Hunter (1707), but as this governor failed to reach the colony it was not until 1710, under Spotswood, that the colonists actually enjoyed this privilege.

The judicial affairs of the colony were under the constant supervision of the home government. The governor was explicitly instructed to furnish an account of the courts, with the fees and method of judicial proceedings, and was to see that such irregularities as the entering of the orders of a court privately by a magistrate, instead of in open court, were corrected. He was not to establish any new court without special royal order, and was to see that no court was adjourned except on good grounds.<sup>4</sup> He was to

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 115; *Dinwiddie Papers*, vol. i, p. 384.

<sup>2</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 115; *Dinwiddie Papers*, vol. i, p. 383.

<sup>3</sup> *Plantations General*, vol. iv, (1), p. 36; *Dinwiddie Papers*, vol. i, p. 384.

<sup>4</sup> Frequent adjournments were, however, complained of about 1740. *Journal Council of Va.*, MS., 1698-1703, p. 96; *McDonald Papers*, vol. vi, p. 124; Instructions to the governors.

furnish the home government every three months an account of all cases tried in the colony, and of those still pending in all the courts. The judicial affairs of the colony were largely in the hands of the attorney-general of England.<sup>1</sup> About 1730 Parliament intervened in the judicial administration of the colony, for the protection of British merchants who had complained of legal obstacles in the collection of debts due them in America.

It will be seen that so far as the actual administration of justice in the colony was concerned, the governor and Council had a close and personal connection with the judicial system, and that notwithstanding the royal supervision there were irregularities. That the administration of justice under such a system was beyond reproach may be questioned, for the governor did not, in some cases at least, hesitate to abuse his power. It is maintained by Greene that the judiciary was so constituted as to be of no effectual check upon the governor and that the process of appealing to the home government was so difficult that it furnished little restraint on him.<sup>2</sup> Chitwood, however, states that the people were given a fair administration of justice.<sup>3</sup>

Notwithstanding the statement of Greene, just given, as to the difficulty of appealing to England, it is a fact that appeals to England were allowed before 1624 to the London Company, and after that date to the king in Council. A committee of the Privy Council was appointed in 1696 for hearing appeals from the colonies. This committee often consulted the Board of Trade and the attorney- and solicitor-general before reporting their opinion to the Privy

<sup>1</sup> *Sainsbury Papers*, 1625-1705, p. 108; 1691-1697, p. 113; 1720-1730, p. 492; *Journal Council of Va.*, MS., 1698-1703, p. 96; *W. and M. Col. Quart.*, vol. iii, p. 235.

<sup>2</sup> *Provincial Governor*, pp. 143, 144.

<sup>3</sup> *Justice in Colonial Virginia*, p. 57.

Council for ratification of their decision. An authority states that "every appeal was referred to the Privy Council's committee," and each case was "carefully and fully tried."<sup>1</sup> If each case appealed from the General Court were carefully examined, justice was nevertheless greatly delayed, for the committee had to give much time to the cases referred to it by the other British colonies. While it is claimed that the administration of justice in the colonies was the constant care of the Privy Council, and that the decisions were usually just, still it is admitted that justice was sometimes delayed, and that the Board of Trade was occasionally permitted to encroach upon the committee for hearing appeals.<sup>2</sup> The right of appeal to the crown was an established principle of English constitutional law. In British colonial administration, therefore, the exercise of this right accustomed the colonists to regard the colonial courts as only a part of a system which found a unifying principle in a court of final appeal.<sup>3</sup>

Many cases affecting governmental, economic and social conditions in the colony were appealed to the crown and examined by the committee appointed for this purpose, and after about 1680 the number of cases appealed was greatly increased.<sup>4</sup> Appeal to the king in Council was granted even in the cases of murder. The committee on one occasion at

<sup>1</sup> H. D. Hazeltine, *Appeals from Colonial Courts to the King in Council*, Report of American Historical Association, 1894, p. 350.

<sup>2</sup> *Acts Privy Council, Col.*, vol. ii, pref., pp. 6, 10, 11.

<sup>3</sup> Hazeltine, p. 350.

<sup>4</sup> *Acts Privy Council, Col.*, vol. ii, nos. 88, 203, 393, 632, 770, 909, 1100, 1240, 1263, 1311, 1327; vol. iii, nos. 65, 133, 167, 265, 391, 427, 487, 508, 545, 561, 568; vol. iv, nos. 51, 93, 113, 150, 172, 180, 194, 210, 227, 286, 288, 403, 417, 443, 530, 557, 562, 568, 613, 699, 727, 767; vol. v, nos. 128, 172, 296, 390, 405; *Unbound Papers, 1700-1770*, nos. 115, 136, 278, 287, 288, 317, 396, 539, 552, 579, 665, 667, 731, 761, 840; *British Museum, Add., MSS.*, nos. 36216, 36217, 36218, 36219.

least pardoned a man convicted of murder and sentenced to death by the General Court.<sup>1</sup> A service rendered by this committee was the adjusting of differences between the colonists and the English merchants, occasioned by the system of exchange and credit which, owing to the distance and the scarcity of money in the colony, was made necessary. Such, for example, as the case of certain colonists who were in debt to London merchants, and others in which certain colonists appealed for the protection of their interests, which were jeopardized by London merchants having taken advantage of the bankruptcy law.<sup>2</sup>

There was an attempt made in 1768 to force the colonists to send to England for trial those charged with any crime, but it failed. The strong opposition raised in the colony, the resolutions of the House of Burgesses and their address to the king requesting that the act of Parliament providing for this should not be enforced, no doubt influenced the home government to desist from the execution of the plan.<sup>3</sup>

In the following detailed study of the more important judicial officials a better understanding of the administration of justice in the colony may be had.

Before 1634 the duties of the sheriff were performed by the provost marshal, or sometimes by the commander of a hundred, but after this date sheriffs were regularly appointed.<sup>4</sup> At first the county courts selected the sheriff, but

<sup>1</sup> *C. O.* 324, 50, p. 98.

<sup>2</sup> *Acts Privy Council, Col.*, vol. iii, nos. 489, 427; *British Museum, Add. MSS.*, nos. 36217, 36219; Balthwayt, *Virginia Papers*, MS. Bills of exchange were used by persons in the colony who had a balance to their credit in the hands of some English merchant. In many instances in seventeenth century according to Bruce these bills were protested because planters were either "bankrupt" or "unscrupulous." *Ec. Hist. of Va.*, vol. ii, p. 518.

<sup>3</sup> *Journal House of Burgesses, 1766-1769*, intro., pp. 9, 38, 215.

<sup>4</sup> Chitwood, p. 108.



soon the governor and Council appointed him on recommendation of the county commissioners, and later the justices served in rotation, each for a term of one year. From about 1700 to the Revolution, the sheriff was appointed by the governor and Council on the recommendation of the county court, and received his instructions from them.<sup>1</sup> Occasionally the governor used his appointive power to dispose of an obnoxious member of the House by appointing him sheriff, and practically forcing him to accept the office. Later a law was passed prohibiting any burgess from accepting the office of sheriff.<sup>2</sup> The number of sheriffs increased as the counties were increased, since there was one for each county. In 1758 there were fifty in the colony.<sup>3</sup>

The sheriff was the ministerial officer of the county court, rather than a judicial one.<sup>4</sup> He executed the orders and sentences of the county court and the General Court, the orders of the justices of the peace, made arrests, and was the keeper of the county prison. It was his duty to proclaim the accession of the king, and to announce publicly at the court house the annulling of an act of Assembly by the king.<sup>5</sup> He was required to furnish bond of £1000 in the county court for the faithful execution of his duties, and especially the collection of the revenues received by him.<sup>6</sup> He collected the quit-rents, the public, the county, and usually the parish levies, held the election for the bur-

<sup>1</sup> Chitwood, p. 109; Hening, vol. vii, p. 644; *Journal Council of Va.*, MS., 1705-1721, p. 236; *Cal. St. P. Col.*, 1697-1698, no. 1043; *Rappahannock County Records*, 1695-1699, p. 39; Bruce, *Instit. Hist. of Va.*, vol. i, p. 599.

<sup>2</sup> Hening, vol. viii, p. 317; Hartwell, Blair, and Chilton, p. 28; Miller, p. 127.

<sup>3</sup> *Fulham MSS., Virginia*, 1st box, nos. 7, 138.

<sup>4</sup> Webb, p. 292.

<sup>5</sup> Bruce, *Instit. Hist. of Va.*, vol. i, p. 598; Chitwood, p. 111; Hening, vol. viii, p. 181.

<sup>6</sup> *Ibid.*, pp. 39, 273; Webb, p. 299.

gesses, at which time he also received grievances and public claims to be presented to the House of Burgesses, and summoned both grand and petty juries for the county court and the General Court.<sup>1</sup> Upon the order of the Council, he attended the election of the vestry of the parish, administered the oath to those voting, presided at this election, and reported to the Council the names of the newly-elected vestrymen.<sup>2</sup>

He acted as the agent of the governor and Council in publishing general orders and proclamations, and in summoning the officers of the militia to a council of war held at the capital.<sup>3</sup> The sheriff communicated to the commanders of the militia, the naval officers and collectors the orders of the governor and Council regarding the capture of pirates,<sup>4</sup> and also gave notice of the departure of ships, rendered aid to the surveyor-general, and transmitted copies of escheated lands.<sup>5</sup> He reported personally his account of the quit-rents to the receiver-general, upon oath, certified to by the county court, and also the fines imposed by the General Court and collected by him.<sup>6</sup> He reported to the county court his collection of the public levy, and once a year accounted with the treasurer for this revenue.

For collecting the public, county and the parish levies he received ten per cent, and the same for collecting the royal

<sup>1</sup> E. Channing, *Town and County Government in the English Colonies*, p. 46; Webb, pp. 108, 212, 303; Hening, vol. iii, p. 264; *Elizabeth City County Records, 1684-1699*, p. 12.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 96.

<sup>3</sup> *Ibid.*, 1698-1703, p. 152; *Cal. Va. St. P.*, vol. i, p. 35.

<sup>4</sup> *Cal. St. P. Col.*, 1696-1697, no. 1078; 1699, p. 148.

<sup>5</sup> *Ibid.*, 1689-1692, nos. 2167, 2177, 2199.

<sup>6</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 75, 334; Hening, vol. iv, p. 79; vol. viii, p. 179, 182; *Dinwiddie Papers*, vol. i, p. 21; Webb, p. 261. Before 1664 the sheriffs accounted with the treasurer for the quit-rents.

quit-rents.<sup>1</sup> His compensation was also in certain fees on all business done in the county courts, which fees were specified by the Assembly. The office of sheriff was "very profitable."<sup>2</sup> In addition to the many fees charged by him, he received four per cent from the secretary, clerks of courts and surveyors, who handed him for collection all accounts of their usual fees still unpaid for services rendered by them and for which they did not immediately demand the fees.<sup>3</sup> So lucrative was this office that it was, up to about 1700, much sought after, and it was claimed that many purchased the office and held it longer than the law permitted.<sup>4</sup> But by 1710, on account of the low price of tobacco, in which currency most of these fees were paid, it was difficult to get suitable men to accept the shrievalty, and it became necessary to pass a law imposing a fine of three hundred pounds of tobacco on any one who should refuse to serve when elected.<sup>5</sup> A striking illustration of the unwillingness of men to serve in this capacity was furnished in 1706, when a special compensation of £5 10s. 10d. was granted out of the quit-rents to the sheriff of Surry County for the "hardship of serving three years."<sup>6</sup> The "defaults and defects" in the collecting of the public levy by sheriffs, as early as 1647, led the Assembly to relieve them of this duty and to appoint six special collectors for this purpose. This was, however, only a temporary change, for

<sup>1</sup> Hartwell, Blair, and Chilton, pp. 27, 56, 57; *British Museum, King's MSS.*, no. 206, p. 256.

<sup>2</sup> Hening, vol. ii, p. 146; Beverley, p. 199; Bruce, *Instit. Hist. of Va.*, vol. i, p. 600.

<sup>3</sup> Webb, pp. 143, 305. This system of credit was due to waiting for the tobacco crop.

<sup>4</sup> Hartwell, Blair, and Chilton, pp. 27, 28; *Va. Mag. Hist. and Biog.*, vol. ii, pp. 289, 387; Andrews, *Colonial Self-Government*, p. 211.

<sup>5</sup> Hening, vol. iii, p. 500; Chitwood, pp. 109, 110; Webb, p. 299.

<sup>6</sup> Blathwayt's *Journal*, vol. ii, p. 469.

the sheriffs were soon again performing this service.<sup>1</sup> The price of tobacco, no doubt, had much to do with the exorbitant charges demanded by sheriffs and the cases of fraud and misappropriation of funds which sometimes occurred.<sup>2</sup> It seems, however, that near the end of the colonial period, when there was coin used in the colony, the sheriffs were still guilty of these exactions. An act of Assembly was passed in 1769 to prevent sheriffs from defrauding those who did not pay their taxes in tobacco, in calculating the difference between money and tobacco values.<sup>3</sup> As a further protection against fraud, sheriffs were required to furnish all persons paying them fees a receipt with a detailed statement of the payment.<sup>4</sup> The opportunities for fraud and the charges so frequently brought against sheriffs, their close association with nearly every phase of local administration, and especially their part in the election of burgesses, no doubt occasioned the act of Assembly passed in 1765 preventing their sitting in the House of Burgesses, either while in office or for two years after having retired.<sup>5</sup>

Sheriffs appointed and removed their deputies, or "under-sheriffs." It was provided, however, that no under-sheriff was to be allowed to serve longer than two years in succession without the approval of the county court, since "by the long continuance of under-sheriffs in office they gain an undue influence, and by that means are induced to commit many acts of oppression and injustice."<sup>6</sup>

<sup>1</sup> Hening, vol. i, p. 342.

<sup>2</sup> *Journal Council of Va.*, MS., 1705-1721, p. 13; Hening, vol. vi, p. 552; vol. viii, p. 244.

<sup>3</sup> Hening, vol. viii, p. 381.

<sup>4</sup> *Ibid.*, p. 525.

<sup>5</sup> *Ibid.*, p. 316.

<sup>6</sup> *Ibid.*, p. 524; Webb, p. 299; *Journal Council of Va.*, MS., 1705-1721, p. 91; *Rappahannock County Records*, 1695-1699, p. 41.

A comparison of the duties of the sheriff in the colony with those of the same official in England shows that there was a marked similarity between them, and that the shrievalty was invested with as much dignity in the colony as it was in England.<sup>1</sup>

The justices of the peace were appointed under the seal of the colony by the governor, and all controversies and complaints concerning them were reported to the governor and Council.<sup>2</sup> There were, after about 1700, usually from eight to twenty justices in each county. In 1726 there were four hundred and four altogether in the colony, and the number increased as new counties were created.<sup>3</sup> For a time in the seventeenth century it was provided that any member of the Council might sit in the county court with the justices and assist in the performance of the duties devolving upon them.<sup>4</sup> By the eighteenth century it seems that the councillors did not have this privilege. The governor was also explicitly forbidden by royal instructions to execute the office of justice of the peace himself or by deputy.<sup>5</sup>

The duties of justices of the peace were ministerial and judicial. As extraordinary ministers of justice in certain cases they executed writs of certiorari, took surety of the peace, and performed similar duties. As judicial officers, they acted as judges of record and could take cognizance

<sup>1</sup> Webb, pp. 292-298; Chitwood, p. 110; Bruce, *Instit. Hist. of Va.*, vol. i, p. 600; F. W. Maitland, *Constitutional History of England*, p. 485; E. P. Cheyney, *European Background of American History*, pp. 261-269.

<sup>2</sup> *Journal Council of Va.*, MS., 1692-1693, pp. 139, 153; 1721-1734, p. 286; 1705-1721, p. 26; *Cal. St. P. Col.*, 1696-1697, no. 1320; *Va. Mag. Hist and Biog.*, vol. iii, p. 116; vol. xii, p. 295.

<sup>3</sup> *Fulham MSS., Virginia*, 1st box, no. 7; *Sainsbury Papers, 1720-1730*, p. 486; *Va. Mag. Hist. and Biog.*, vol. i, pp. 288, 365.

<sup>4</sup> Hening, vol. ii, p. 390.

<sup>5</sup> Instructions to the governors.



for the peace in any case, issued warrants for capturing felons, and in session had jurisdiction of all matters at common law or in chancery, except criminal matters concerning life and limb. They granted certificates of oath for any purpose, and especially to merchants swearing as to the invoices of goods imported. These certificates were required by the collectors before permission was given to unload a ship.<sup>1</sup> The compensation received by the justices of the peace was in fees.<sup>2</sup> Justices were sometimes charged with oppression, such as the levying of tobacco upon the people of their county, for their own accommodation, and the raising of certain funds for the benefit of their friends.<sup>3</sup>

The justice of the peace did not occupy as important a position as the similar official in England.<sup>4</sup> On account of this fact, and also owing to the small fees, this office was not sought by the men of influence in the colony, but in some cases, however, such men did fill it.<sup>5</sup>

The office of constable, which was so well established in England, was early introduced into the colony. By 1637 this office had become a part of the governmental machinery of the county. Constables were at first chosen by the Assembly, but later appointed by the county court.<sup>6</sup> They were non-commissioned county officers and could be removed by the justices of the peace and another appointed by the justices until the next county court.<sup>7</sup> The General Court could compel any one refusing to serve as constable to perform the duties of the office for at least one year, but

<sup>1</sup> Webb, pp. 118, 177, 203.

<sup>2</sup> Hening, vol. ii, p. 244.

<sup>3</sup> Andrews, *Colonial Self-Government*, p. 211.

<sup>4</sup> Webb, p. 205; Cheyney, pp. 274-275, 288-289.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. i, pp. 364-369.

<sup>6</sup> Chitwood, p. 113.

<sup>7</sup> Webb, p. 89; *Richmond County Orders, 1692-1694*, pp. 76, 107.

justices of the peace, clergymen, lawyers, and physicians were exempted.<sup>1</sup> The constables were changed annually, and their bounds or precincts fixed by the county court, and in each precinct of the county there was a constable.

The constable had coördinate authority with the sheriff as well as special power of his own. He executed warrants or writs issued to him, also orders and decrees of courts and the Assembly, collected fines for small offences, arrested violators of revenue laws, and searched for smuggled goods.<sup>2</sup> He made "perambulations" to view tobacco fields and to prevent planters allowing suckers to grow after tobacco had been cut, and had the power to destroy inferior tobacco. He executed the game laws, and had full charge of all runaways, whether they were sailors, white servants or slaves.<sup>3</sup> As an officer of law and good order, he was to seek to prevent disturbances of any kind and to take a leading part in the hue and cry in cases of murder and robbery.<sup>4</sup> His compensation was in fees, which were specified by act of Assembly and were to be paid by the person at whose request any service was rendered.<sup>5</sup> Many of the duties performed by constables were the same as those performed by the similar official in England.<sup>6</sup>

The coroners were appointed under the seal of the colony by the governor with the advice of the Council, and made their annual report to them,<sup>7</sup> and in addition to this report furnished the auditor with an account of the services per-

<sup>1</sup> Webb, p. 89.

<sup>2</sup> *Ibid.*, p. 90; Chitwood, p. 113; *Henrico County Records, 1677-1699*, April 15, 1699.

<sup>3</sup> Hening, vol. v, p. 340; Channing, p. 47.

<sup>4</sup> Hening, vol. i, pp. 246, 483; Webb, pp. 90-95, 181.

<sup>5</sup> Hening, vol. v, p. 340; Webb, p. 96; Channing, p. 48.

<sup>6</sup> Cheyney, pp. 297, 303.

<sup>7</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 116; *Cal. St. P. Col.*, 1696-1697, no. 1078; *Cal. Va. St. P.*, vol. i, p. 30.

formed during the year.<sup>1</sup> The coroners were officers of the county recommended by the county courts usually from among the justices of the peace, and executed their offices "according to the laws of England."<sup>2</sup> There were, after about 1700, from one to four coroners appointed in each county, and in 1726 there were fifty-four altogether in the colony.<sup>3</sup> In the case of a vacancy or absence of any of them, the justice of the peace performed the duties and received the fee.<sup>4</sup> The fee for holding an inquest was 13s. 4d., according to the allowance in such cases in England, or one hundred and thirty-three pounds of tobacco, at the choice of the coroner, to be paid out of the estate of the deceased. Should the deceased have left no estate, the county paid this fee.<sup>5</sup>

The duties of the coroner were both ministerial and judicial. As a ministerial officer he executed all processes sent to him, and in case the sheriff were personally interested in a suit or for any reason could not perform his duties, the coroner was empowered to act for him. As a judicial officer he held an inquisition over the bodies of persons who had met violent death, and could order the constable or other officers to assist him in summoning a jury.<sup>6</sup> The principal duty of the coroner was the holding of the inquest, but he also acted as the administrator of the estates of such persons.<sup>7</sup> Near the end of the colonial period,

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 91.

<sup>2</sup> *Ibid.*, p. 72; 1721-1734, p. 236; Webb, p. 97; *York County Records*, 1684-1687, p. 182.

<sup>3</sup> *Fulham MSS., Virginia*, 1st box, no. 7; *Va. Mag. Hist. and Biog.*, vol. i, pp. 364-373.

<sup>4</sup> Beverley, p. 199; *Henrico County Records*, 1688-1697, p. 212; Hening, vol. ii, p. 419.

<sup>5</sup> Hening, vol. iv, pp. 73, 350; vol. v, pp. 50, 340.

<sup>6</sup> *Ibid.*, vol. viii, p. 119; Webb, p. 98.

<sup>7</sup> Bruce, *Instit. Hist. of Va.*, vol. i, p. 604.

coroners were required to give bond in the county court to the sum of £500.<sup>1</sup> The duties of the coroner corresponded to those performed by the similar official in England.<sup>2</sup>

During the earlier part of the seventeenth century there was no attorney-general, but the governor and Council sitting in their judicial capacity could send to England for an opinion on any case upon which they needed legal advice.<sup>3</sup> The first attorney-general was appointed in 1643.<sup>4</sup> From this date to the end of the seventeenth century this office was filled by royal appointment, the commission bearing the sign manual of the king, but it seems that after about 1700 until near the close of the colonial period the attorney-general was appointed and commissioned by the governor under the seal of the colony.<sup>5</sup> This office was thus at first, and near the end of the colonial period, a royal appointment.<sup>6</sup>

The governor even then, however, had a share in the appointment to the extent of recommending persons for the position.<sup>7</sup> But during the period when the appointment was made by the governor he did not have absolute power of removal, for should he consider it necessary, he might suspend the attorney-general, but such action was subject

<sup>1</sup> Hening, vol. viii, p. 327.

<sup>2</sup> Cheyney, p. 272; Webb, p. 97.

<sup>3</sup> Chitwood, p. 120; *Sainsbury Papers*, 1618-1624, p. 109.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. viii, p. 70; Stanard, p. 25.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. i, p. 238; *C. O.* 5, 190, p. 327; 324, 50, pp. 95, 134; 51, p. 65; *Cal. St. P. Col.*, 1701, no. 523; Report of Fauquier to the Board of Trade, in *British Museum King's MSS.*, no. 205, p. 495.

<sup>6</sup> *Journal House of Burgesses*, 1766-1769, intro., pp. 14, 15; *Journal Board of Trade*, vol. lxiii, pp. 195, 262; vol. xvi, pp. 168, 195; *C. O.* 5, 67, p. 585; 220, p. 224; *Va. Mag. Hist. and Biog.*, vol. iii, p. 122; *Dinwiddie Papers*, vol. i, p. 492.

<sup>7</sup> *Cal. St. P. Col.*, 1669-1674, no. 201, p. 263; 1697-1698, no. 951; *Dinwiddie Papers*, vol. i, p. 138.

to review by the Board of Trade and finally by the king in council.<sup>1</sup> Such matters as the granting of permission to the attorney-general to go to England were, however, left to the discretion of the governor, subject, of course, to royal approval.<sup>2</sup> Near the end of the colonial period, when he was again appointed by the home government, the power of the governor over him was considerably restricted. In case he should leave the colony, he was required to secure a competent deputy to serve during his absence. From 1643 to 1775 but two members of the Council held the office of attorney-general.<sup>3</sup> So this office, unlike those of the auditor and the secretary, were not held exclusively by councillors.

The duties of the attorney-general were largely of a legal nature, and before 1680 did not necessitate much work, but gradually increased after that date.<sup>4</sup> He prosecuted criminals at the General Court and the courts of oyer and terminer, and persons refusing to pay quit-rents, and gave his opinion, by order of the Council, on matters requiring a knowledge of law, and explained instructions from the home government.<sup>5</sup> To specify more particularly, he decided suits between collectors and masters of ships,<sup>6</sup> and disputes as to fines and forfeitures were referred to him for his opinion.<sup>7</sup> He assisted the committees of the House of Burgesses in the examination of the bills referred to them, and was himself a member of the committee of propositions

<sup>1</sup> *Dinwiddie Papers*, vol. i, pp. 363, 492; vol. ii, pp. 679, 781.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 157.

<sup>3</sup> *Cal. St. P. Col.*, 1689-1692, nos. 1834, 2295; Jones, p. 77; Stanard, p. 25.

<sup>4</sup> *Journal Council of Va.*, MS., 1698-1703, p. 109; 1721-1734, p. 436.

<sup>5</sup> *Ibid.*, 1698-1703, p. 109; 1705-1721, p. 18; *Journal House of Burgesses*, 1692-1693, p. 146; Webb, p. 113; *Essex County Orders and Deeds*, p. 49; Chitwood, p. 120.

<sup>6</sup> *Cal. St. P. Col.*, 1697-1698, no. 416.

<sup>7</sup> *Journal Council of Va.*, Executive Session, June 2, 1722.



and grievances. He prepared for the governor and Council proclamations of all kinds, and the commissions and the forms of bonds for the commanders of private men-of-war, collectors and other officers,<sup>1</sup> and read publicly the governor's commission when he qualified and took charge of the government. He prosecuted those violating laws regarding trade, and in other ways defrauding the government.<sup>2</sup>

No salary was granted by the king to the attorney-general until about 1680, and then only £40 was allowed out of the revenue of two shillings per hogshead, as the colony was already paying him £60 a year.<sup>3</sup> This salary was later, upon the approval of the lords of the treasury, increased to £140, and by 1767 was raised to £200.<sup>4</sup> One-half of this amount was paid out of the two shillings per hogshead revenue, on the warrants of the governor upon the receiver-general, and the other half out of the quit-rents by royal order.<sup>5</sup> Few perquisites were attached to this office.<sup>6</sup> After 1703, when his salary was increased, he was required to reside at the capital in order that he might be of more service to the governor and the other officials of the colony.<sup>7</sup>

<sup>1</sup> *Ibid.*, MS., 1705-1721, pp. 38, 57, 69; *Cal. St. P. Col.*, 1696-1697, no. 776; *Sainsbury Papers*, 1625-1715, p. 26.

<sup>2</sup> *Cal. St. P. Col.*, 1689-1692, no. 2199; *Cal. Va. St. P.*, vol. i, p. 74; *Journal Council of Va.*, MS., 1705-1721, p. 118.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 109; Blathwayt's *Journal*, vol. ii, pp. 233, 243; Blathwayt, *Virginia Papers*, MS.

<sup>4</sup> *British Museum, King's MSS.*, no. 205, p. 495; no. 206, p. 249; *Journal Board of Trade*, vol. xvi, p. 196; *C. O.* 5, 67, p. 585; *Cal. St. P. Treas. Books and Papers*, 1731-1734, pp. 241, 389, 425; Blathwayt's *Journal*, vol. ii, pp. 233, 243.

<sup>5</sup> *Cal. St. P. Treas. Books and Papers*, 1731-1734, pp. 241, 425; *Journal Council of Va.*, MS., 1705-1721, p. 43; 1721-1734, p. 436; *Dinwiddie Papers*, vol. i, p. 390; *Cal. St. P. Treas. Papers*, 1714-1719, p. 76.

<sup>6</sup> *Acts Privy Council, Col.*, 1680-1720, no. 904.

<sup>7</sup> Chitwood, p. 120.

The admiralty affairs of the colony were under royal supervision, through the lords of the admiralty, who by means of instructions to the governor and to the captains of ships, and reports from them and from the officers of the admiralty court, were concerned with all matters pertaining to the admiralty. Such, for example, as the petitions of merchants requesting that a ship be sent to cruise on the coast to protect trading ships from pirates, ships-of-war sent to guard merchant vessels on the way to England, memorials favoring the raising of an embargo, and matters regarding the impressment of men by the captains of ships were referred to the lords of the admiralty.<sup>1</sup>

In 1660 a law was passed in Virginia authorizing the governor and Council to constitute themselves a court of admiralty, but such a court was irregular and illegal, and no regular admiralty court was established until 1697.<sup>2</sup> Before that time cases involving questions of admiralty were tried by the General Court and the matters of lesser importance were left to the county courts. Governor Andros was granted, on June 26, 1697, under commission of the great seal of the High Court of Admiralty of Great Britain, authority to establish admiralty courts in Virginia, Carolina and the Bahama Islands, and later in Jamaica and Pennsylvania.<sup>3</sup> The officers of the court of vice-admiralty, the judge, the register, the marshal, and the advocate, were commissioned by the lords of the admiralty under the seal of the High Court of Admiralty of Great Britain, usually upon the recommendation of the governor, and their names

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 89-90, 92, 95, 106, 111, 121, 122, 125, 155; 1705-1721, p. 328; *McDonald Papers*, vol. v, pp. 112, 113.

<sup>2</sup> *W. and M. Col. Quart.*, vol. v, p. 129; Andrews, *Colonial Self-Government*, pp. 31, 35-36.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 39, 98; *Spotswood Letters*, vol. ii, p. 169.

were registered in the admiralty office.<sup>1</sup> By 1736, however, the vice-admiralty court, as then constituted, was composed of not less than seven judges, one of whom was always the governor or a councillor. Merchants, planters, and officers of ships were also eligible to a seat on the bench of this court.<sup>2</sup> By about 1750 the system of a single judge and the three other officers adopted in 1697 seems to have been reëstablished. An order in Council of July 6, 1768, directed the appointing of four courts of vice-admiralty in the colonies of North America, to improve the system of collecting fines and the trying of cases. The one at Philadelphia included in its jurisdiction New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia.<sup>3</sup> These courts had original and also appellate jurisdiction over the vice-admiralty courts held in each colony. There was no regular time nor place for the holding of the vice-admiralty court, but it was convened upon application to the governor and Council when any occasion demanded it.<sup>4</sup>

The court of vice-admiralty tried cases involving violations of the Navigation Acts and, for a brief period, those concerned with piracy, privateering, robbery and felony on land or sea, where its jurisdiction extended. It not only had the power to try cases involving illegal trading and the condemnation of ships, but also those concerned with unlawful conduct on the part of collectors and others in regard to smuggling goods in order to evade the customs. Controversies between the master of a ship and the mariners came within the jurisdiction of this court. The proceed-

<sup>1</sup> *Journal Council of Va.*, MS., 1721-1734, p. 6; *Sainsbury Papers*, 1625-1715, p. 193; 1705-1707, p. 307.

<sup>2</sup> Chitwood, p. 72; Webb, p. 249; *Journal House of Burgesses*, 1758-1761, pp. 292, 296.

<sup>3</sup> *Plantations General*, vol. xxx, p. 7; C. O. 5, 216, p. 114.

<sup>4</sup> *Journal Council of Va.*, 1705-1721, p. 202; app., pp. 19-20; 1721-1734, p. 10; Chitwood, p. 72; Beverley, p. 197.

ings of this court were transmitted to the admiralty office, and appeals lay to the High Court of Admiralty or to the king in council.<sup>1</sup> One-third of the money arising from the sale of ships condemned by the court of vice-admiralty belonged to the king and two-thirds to the colony.<sup>2</sup> There were no salaries allowed the officers of the vice-admiralty court, as their compensation was in fees.<sup>3</sup> Nicholson approved in 1699 their petition for salaries to be paid out of the two shillings per hogshead revenue or out of the quit-rents, but the home government did not grant the request.<sup>4</sup> The Council a little later recommended to the commissioners of the prize office that these officers be allowed a further compensation, as these fees were very small.<sup>5</sup> About 1760 the judge and other officers were granted by act of Parliament £10 each for every court held.<sup>6</sup>

By 1705 there was appointed by the commissioners of the prize office, upon instructions from the lords of the treasury, the agent for prizes. There was no need of such an official until about 1700. Berkeley stated in 1671 that in twenty-eight years there had been no prizes brought into the colony.<sup>7</sup> The agent for prizes did not supersede the

<sup>1</sup> Chitwood, p. 72; *Dinwiddie Papers*, vol. i, p. 384; *Plantations General*, vol. iv, (1), p. 36; *Cal. St. P. Col.*, 1700, pp. 318, 326; *Journal Council of Va.*, MS., 1698-1703, p. 115; 1705-1721, p. 202; 1721-1734, p. 10; *Journal House of Burgesses*, 1758-1761, pp. 292, 296; Webb, p. 249; Bruce, *Instit. Hist. of Va.*, vol. i, p. 704.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 10.

<sup>3</sup> *Ibid.*, 1698-1703, pp. 98, 115.

<sup>4</sup> *Ibid.*, 1705-1721, p. 36; *Cal. St. P. Col.*, 1699, pp. 311, 387. The fees requested by Nicholson were £50 to the judge, £25 to the register, £25 to the advocate and £20 to the marshal. The fees allowed on an occasion a few years later for condemning a prize were £10 to the judge, £7. 7s. to the register, £5 to the advocate, £2 to the marshal.

<sup>5</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 36, 308.

<sup>6</sup> *British Museum King's MSS.*, no. 206, p. 273.

<sup>7</sup> Henning, vol. ii, p. 511.

court of vice-admiralty, but acted with it.<sup>1</sup> There were many irregularities in some of the colonies in regard to prizes, especially by the captains of ships, who disposed of such prizes as they took at their own pleasure, thus making the creation of the above office very essential. In case of war, the governor and the agent for prizes received special orders from the lords of the admiralty, and sometimes under the sign manual of the king, regarding prizes taken from the enemy, and also the treatment of privateers.<sup>2</sup> The governor was required to furnish from time to time, to the lords of the treasury, an exact account of all matters pertaining to prizes.<sup>3</sup> The agent for prizes received five per cent of the proceeds of all prizes disposed of by him.<sup>4</sup> As there had reached the home government complaints of excessive fees charged in several colonies for the condemnation of prizes, Dunmore was instructed to see that the "officers of the admiralty court in Virginia" did not demand higher fees than those charged in England, which amounted to about £10 for the condemnation of each prize.<sup>5</sup> This reference to prizes in 1771 without mentioning the agent for prizes, and a special order from the Board of Trade in 1760 to the governor to furnish an account of the proceedings in certain cases of prizes, and the governor's instructions to the judge of the vice-admiralty court regarding certain privateers without mentioning the agent for prizes would indicate that this office was discontinued near the end of the colonial period.

The governor as vice-admiral had general supervision of the collection of admiralty dues. In 1713, however, Francis

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 26, 35.

<sup>2</sup> *Ibid.*, pp. 326, 424; 1721-1734, p. 359.

<sup>3</sup> *Ibid.*, 1705-1721, app., p. 10.

<sup>4</sup> *Ibid.*

<sup>5</sup> Dunmore's Instructions.



Nicholson, former governor of Virginia, was appointed by the lords of the treasury to have charge of the arrears and of the rights<sup>1</sup> and perquisites of the admiralty in North America and the adjacent islands.<sup>2</sup> The next mention of this office was in the instructions to the Earl of Orkney (1727) when Robert Byng was appointed to the position. The office was again mentioned in the instructions to Albemarle (1737), to Botetourt (1768) and to Dunmore (1771). The governor and the commissioners, for trying pirates, were to account with this receiver-general for all admiralty dues and pirates' goods which had been captured.

The collectors of the six pence per month from seamen's wages for the royal hospital at Greenwich were appointed as early as 1730 by commissioners in England who, pursuant to an act of Parliament, were given charge of this special royal revenue. In addition to the reference to this matter in the formal instructions to the governors, special orders were sent from time to time enjoining them to render assistance to these collectors. Greenwich hospital was under the admiralty office, and the commissioners having charge of this revenue were subject to the instructions of the lords of the admiralty.<sup>3</sup> For the encouragement of mariners and seafaring persons, not being freeholders, commonly employed in navigation, who paid towards the support of the hospital at

<sup>1</sup> These rights belonged to the lord high admiral, but they at times, were given over to the crown. The claim to these rights carried with it a certain jurisdiction. Property found on sea shore and unclaimed belonged to the admiral. Should the claimant appear he was entitled to restoration on proof of his claim, and the payment of a reasonable salvage. This salvage fee was allowed to the vice-admirals of the coasts who took care of the property. Holdsworth, *History of English Law*, vol. i, p. 328.

<sup>2</sup> *Plantations General*, vol. ix, February 27, 1713.

<sup>3</sup> Instructions to the governors; *Plantations General*, vol. xi, (M), p. 13.

Greenwich out of their wages, a law was passed exempting them from the payment of any public, county or parish levy.<sup>1</sup> It thus seems that Virginia sailors paid the required six pence per month.

Pirates were very numerous from about 1660 to about 1730 on the Atlantic Coast and in the West Indies, and the Carolina coast was one of their favorite hiding-places. Ships of war were frequently detailed to convoy the merchant vessels to England in order to prevent pirates and other enemies from capturing them. The merchant vessels would not sail until a sufficient number was ready to justify the sending of the ships of war. In some cases the merchant vessels themselves were supplied with cannon.<sup>2</sup> Virginia and the Carolinas, and especially the latter, suffered much at the hands of pirates.<sup>3</sup> North Carolina offered not only a good hiding-place for piratical ships, but also protection to the pirates. The colonists were anxious to trade with them, and those "pirates who were brought to trial" in North Carolina "escaped by shameless bribery of the juries, and some of the highest officials of the courts were not free from imputations of the most corrupt conduct."<sup>4</sup> Upon the request of those colonists in North Carolina who did not approve of such conduct, Governor Spotswood sought to aid them, and the Virginia Assembly offered a reward for the capture of certain pirates who were causing the most trouble.<sup>5</sup> Spotswood equipped at his own ex-

<sup>1</sup> Hening, vol. v, p. 36; vol. vi, p. 43.

<sup>2</sup> *Journal House of Burgesses, 1659/60-1693*, p. 387; *Va. Mag. Hist. and Biog.*, vol. xix, p. 31; vol. xx, p. 124; vol. xxi, p. 392; *C. O.* 5, 210, pp. 10-14; 1293, pp. 14, 32; 324, 7, p. 137; 8, p. 325; 10, p. 119.

<sup>3</sup> S. C. Hughson, *Carolina Pirates and Colonial Commerce*, p. 84; *C. O.* 5, 1293, p. 174.

<sup>4</sup> Hughson, p. 32.

<sup>5</sup> *Ibid.*, p. 76; *Spotswood Letters*, vol. ii, p. 273.

pense two sloops and sent them to the Carolina coast with orders to take the noted pirate Thatch,<sup>1</sup> alias Blackbeard, and bring him to Virginia, dead or alive. The expedition was successful and Thatch, although supported by four hundred men, was killed.<sup>2</sup> The North Carolina authorities denied the right of Spotswood to send the expedition without their permission and threatened to bring suit in England against the Virginia captain who killed Thatch and captured his crew and goods. The evidence brought out in the investigation showed that the North Carolina authorities had been guilty of a most disgraceful participation in the crimes committed by Thatch and his crew.<sup>3</sup>

The proximity of North Carolina to Virginia, as well as the opportunities offered by the Chesapeake Bay, made it impossible for Virginia and Maryland to escape the piratical incursions. One of the earliest instances of a pirate ship entering Virginia waters was, according to Bruce, in 1682. This author maintains that there is no proof that the people of Virginia encouraged pirates by trading with them.<sup>4</sup> Among the cases of piracy in Virginia might be mentioned the one in 1699 when a British ship was seized and plundered at the mouth of the Rappahannock River and eight of the crew compelled to join the pirates. In the same year the noted pirate Captain Kidd attacked the British man-of-war *Essex* in Lynnhaven Bay, and after the

<sup>1</sup> Also spelled Teach. (*C. O.* 5, 1293, p. 174).

<sup>2</sup> *C. O.* 5, 1293, p. 174. The governor of South Carolina stated in a letter to the Board of Trade, June 18, 1718, that Thatch had a ship of forty guns, and also three sloops, and four hundred men. "I don't perceive", said the governor, "his majesty's grace's proclamation of pardon works any good effect upon them. Some few indeed surrender and take a certificate of their so doing, and then several of them return to the sport again." He stated that notwithstanding the royal proclamation of pardon, there were twenty pirate ships near the coast of South Carolina.

<sup>3</sup> Hughson, p. 80.

<sup>4</sup> *Instit. Hist. of Va.*, vol. ii, pp. 203, 209.

encounter the Essex withdrew to James River, leaving the pirate at liberty.<sup>1</sup>

Pirates were tried by a special court of oyer and terminer appointed by the governor.<sup>2</sup> This method was, however, soon changed, and they were first examined in the vice-admiralty court and then sent to England for trial. It was about 1700 that the colony was mostly troubled with pirates, as indicated by the lists of those sent to England about this time.<sup>3</sup> The governor was instructed to hold the goods and effects of captured pirates until after the trial. Not only the pirates themselves, but witnesses were also sent to England, as shown by the Privy Council referring to the lords of the admiralty the petition of a witness for compensation for his services sent over to testify against certain pirates. This witness was granted £60 in addition to five months' pay as a seaman.<sup>4</sup> If the circumstances of any case, however, convinced the governor that those particular pirates might be more effectually brought to punishment in the colony than by sending them to England, he was authorized to have them tried in the colony. He was, however, expected to send all pirates to England for trial if the defects of the laws or the attitude of the colonists seemed to favor them.<sup>5</sup> Much attention was devoted by the Board of Trade to the discussion of matters pertaining to the pirates on the coast of Maryland, Virginia and the Carolinas, many of which matters were laid before the king in council.<sup>6</sup>

<sup>1</sup> C. O. 324, 7, pp. 94, 111.

<sup>2</sup> Hening, vol. iii, p. 178; Jones, p. 29; Chitwood, p. 73.

<sup>3</sup> Hughson, p. 80; *Cal. St. P. Col.*, 1700, no. 523, p. 313; *Plantations General*, vol. v, (1), October 12, 1699.

<sup>4</sup> *Acts Privy Council, Col.*, vol. ii, no. 809.

<sup>5</sup> *Va. Mag. Hist. and Biog.*, vol. xxi, p. 178.

<sup>6</sup> *Journal Board of Trade*, vol. x, p. 375; vol. xi, pp. 11, 180; vol. xii, p. 244; *Plantations General*, vol. v, (1), October 27, 1699; September 20, 1699; November 13, 1699.

In 1700 the piracy act was passed by Parliament, which provided that for the future piracy and other felonies on the high seas were to be tried in the colonies by special courts constituted by commissioners appointed by the crown. Pursuant to this act commissioners for this purpose were provided for by an order in council of June 6, 1700, and their commissions were issued under the great seal.<sup>1</sup> The commissioners in Virginia were the governor, the Council, the secretary, the receiver-general, the surveyor-general of the customs of the southern district of America, the collectors of the customs, the judge of the vice-admiralty court and the captains of British ships of war within the admiralty jurisdiction of the colony. The commission which included these officials was sent to the governor.<sup>2</sup> George Larkin was recommended by the judge of the High Court of Admiralty to go to the colonies, to confer with these commissioners as to their duties, and was furnished duplicates of their commissions. Larkin was referred to by the Board of Trade as a "person versed in the civil law and the proceedings of the court of admiralty." In his instructions under date of April 14, 1701, it was stated that the commissions had been sent to the colonies, "and it being further necessary for the more effectual carrying on that service, and the better settling the forms of proceedings in the execution of those commissions, that some person versed in the civil law and the proceedings of the court of admiralty be sent with duplicates of those commissions in order to inform the commissioners, and do what else may be necessary in the holding

<sup>1</sup> C. O. 324, 7, p. 277; 10, p. 187; *Plantations General*, vol. vii, April 13, 1705; vol. x, November 28, 1728; vol. xvii, May 18, 1761; *Statutes of the Realm*, 11 and 12 William III, 7.

<sup>2</sup> C. O. 324, 10, p. 170; *Va. Mag. Hist. and Biog.*, vol. xxii, p. 122; *Cal. St. P. Col.*, 1701, p. 86.



of those courts." He was instructed to visit the colonies in the order named, beginning with Newfoundland and ending with Jamaica. "During your stay there you are, with the respective governors and others commissioned with you for the trying of pirates, to settle such rules and forms of proceedings in the courts for the trying of pirates as are fit to be observed."<sup>1</sup> The trial and execution of certain pirates in Virginia in 1720 shows that these instructions were obeyed.<sup>2</sup>

It was stated by an authority in 1724 that there were held in Virginia "courts-martial, by judges, appointed on purpose for the trial of pirates; likewise courts of admiralty for the trial of ships for illegal trade."<sup>3</sup> It was, however, stated in 1736 that it was the custom for commissioners appointed under royal authority to sit in the court of vice-admiralty when trying pirates.<sup>4</sup> According to the instructions to Dunmore (1771) pirates were then to be tried by commissioners as had been the practice for about seventy years.<sup>5</sup> Reference is made in the correspondence of the admiralty office, under date of September 1, 1772, to "standing commissions" for this purpose.<sup>6</sup> The commissioners were, as has been stated, the governor and certain officials of the colony. Thus it will be observed that from 1700 to the Revolution pirates were tried in the colony by a commission composed of some of the principal officials of the colony, and that these commissioners, on some occasions at least, sat in the vice-admiralty court when

<sup>1</sup> C. O. 324, 7, p. 377.

<sup>2</sup> *Acts Privy Council, Col., 1720-1745*, no. 30; *Plantations General*, vol. v, (1), June 6, 1700; vol. v, (2) and vol. vi, April 10, 1701.

<sup>3</sup> Jones, p. 29.

<sup>4</sup> Webb, p. 107; Chitwood, p. 73.

<sup>5</sup> Dunmore's Instructions.

<sup>6</sup> C. O. 5, 119, p. 66.

performing their functions. The effort of the British government in coöperation with the colony was successful in suppressing piracy. The later provisions for this purpose were, no doubt, precautionary. The death of certain noted pirates, the effort to suppress piracy by force, and the pardon extended to those who would surrender, combined to influence men to discontinue the practice.<sup>1</sup>

After this study of the administration of justice in the colony, the question as to the efficiency of the judicial system very naturally arises. Since the governor was the president of the General Court, the highest tribunal of the colony, it would be reasonable to suppose that this position of influence would enable him to determine the relation of the judiciary both to the colonists and to the British government. He, however, in most cases it seems, allowed the Council who constituted this court, and whom he did not wish to antagonize, to render decisions without any interference. The administration of justice under such a system was, of course, subject to very serious criticism, for a dictatorial governor supported by the Council did not hesitate, in some cases at least, to abuse this power.

Not only in the General Court, but also in the appointment of certain officials concerned with the administration of justice, the governor was closely connected with the judiciary. A comparison of those holding royal commissions with those appointed by the governor shows that the latter far outnumbered the former, and also that they were constantly and directly employed in performing the functions of their respective offices. Thus the power of the governor over judicial affairs was exercised in local matters through his appointees. In each county, for example, there was a sheriff appointed by the governor, who per-

<sup>1</sup> Some pirates petitioned for, and were granted pardon. (*C. O.* 324, II, p. 3; 5, 1293, p. 174.)

formed valuable services of both a judicial and administrative nature. There were also in each county from eight to fifteen justices of the peace and several constables. Of the other appointees of the governor, the coroner, the officials of the vice-admiralty court, and the attorney-general, the most important was the attorney-general, who for certain periods held a royal commission, and whose services were of both a judicial and legal character.

The officials holding royal commissions were not regularly called upon to exercise the functions of their offices. In the actual exercise of authority, therefore, the judicial appointees of the governor, rather than those holding royal commissions, were more regularly employed. The British government sought to exercise a general supervision of the judicial affairs of the colony. The lords of the admiralty, the lords justices and the attorney-general of England were concerned with the judicial system of the colony, and examined into the whole procedure of the administration. Many cases were appealed from the general court to the king and were heard by the committee of the Privy Council appointed for this purpose. Although justice was, owing to the distance to England and the number of cases appealed from other colonies, somewhat delayed, still, generally speaking, the colonists were given a moderately fair judicial administration.

## CHAPTER VIII

### THE SYSTEM OF DEFENSE

THE military force of the colony was composed exclusively of the militia. Councillors, justices of the peace, overseers of plantations, coroners, millers, and all men over sixty years of age were exempted from military service. In 1756 those exempted numbered 8000, leaving 35,000 capable of bearing arms.<sup>1</sup> The members of the militia furnished their own equipment and were paid only when in service. Colonel Robert Quarry, surveyor-general of the customs, writing (October 15, 1703) to the Board of Trade in regard to military supplies for Virginia, said :

The governor hath taken so good care in disposing of the arms lately sent by her majesty's order, for the use of the country, that the money they cost will be repaid to her majesty in a little time with interest, which I hope will encourage your lordships to propose that there may be a further supply of more arms, ammunition and other necessaries, for the defense of the country, sent according to the account which you will receive from his excellency.<sup>2</sup>

The governor was to see that the British government was reimbursed for the military stores furnished the colony, and the colonists were to provide themselves with arms from this supply at their own expense.<sup>3</sup>

<sup>1</sup> Dinwiddie to Earl of Loudoun, in *Dinwiddie Papers*, vol. ii, p. 474.

<sup>2</sup> *C. O.* 324, 8, p. 311.

<sup>3</sup> Blathwayt's *Journal*, vol. ii, p. 116; *Journal Council of Va.*, MS., 1689-1703, p. 157; *C. O.* 324, 4, pp. 46-50.

Each county had its colonel, lieutenant-colonel, major, county lieutenant, captains, lieutenants, and the inferior officers and privates. These officers were all commissioned by the governor, except the inferior officers below lieutenant, who were commissioned by the colonels.<sup>1</sup> In addition to these, there was the armorer, appointed by the governor, whose duty it was to keep in order the arms belonging to the government, which were in the governor's house and the magazine in Williamsburg. He was considered one of the regular officers of the colony, and was paid his salary (£12 a year), along with the other officials of the colony, out of the two shillings per hogshead revenue.<sup>2</sup> There were also the rangers, appointed by act of Assembly, later however by the governor, to serve as scouts on the frontier, and especially at the heads of the four great rivers, to prevent sudden attacks by the Indians. They did not serve continuously, but when in actual service each of the four companies was composed of about fifteen men, later increased to fifty, commanded by a lieutenant.<sup>3</sup> There were officers known as the "lookouts," appointed by the commanding officer of the militia in the maritime counties of Northampton, Princess Anne, Elizabeth City, and Accomac, whose duty it was to "keep a constant lookout" for the ships of an enemy. They were compensated by the Assembly, at the rate of two hundred pounds of tobacco a month.<sup>4</sup>

<sup>1</sup> *Journal House of Burgesses, 1758-1761*, p. 263; Hartwell, Blair, and Chilton, p. 63; *Dinwiddie Papers*, vol. i, p. 319; Hening, vol. iii, p. 13; vol. iv, p. 120; vol. v, p. 21; vol. vi, p. 118.

<sup>2</sup> *Journal Council of Va.*, MS., 1721-1734, p. 195; Blathwayt, *Virginia Papers*, MS.; *Va. Mag. Hist. and Biog.*, vol. iii, p. 122.

<sup>3</sup> Hening, vol. iii, pp. 119, 126; vol. iv, pp. 9, 37; *Journal Council of Va.*, MS., 1705-1721, pp. 197, 258.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 115, 154; 1721-1734, p. 36; Hening, vol. iii, p. 208; vol. iv, p. 199; vol. vi, p. 115; vol. vii, p. 112.



A very important officer was the county lieutenant mentioned above. He corresponded to the lord lieutenant of the shire in England, and was always one of the most influential men in the county. He was appointed by the governor for better regulating and disciplining the militia of the county.<sup>1</sup> The services of the county lieutenant were of much value to the adjutant. The adjutant or major-general of musters was a royal appointee and was paid out of the royal revenues.<sup>2</sup> He did not serve continuously, for although he served the colony near the close of the seventeenth century, still the office was, no doubt, discontinued for a time. In 1733 the Council expressed the hope that the lords of the treasury would approve of the establishment of the office of adjutant until the militia could be regularly disciplined, and then the office and salary attached thereto would be abolished. A royal order was thereupon issued establishing this office with a salary of £150 a year, to be paid out of the two shillings per hogshead revenue, and the warrant for allowing this salary was sent to the governor by the lords of the treasury.<sup>3</sup> By about 1755, however, there were four adjutants, one for each of the four military districts into which the colony was then divided. They were at this time commissioned by the governor, and received out of the two shillings per hogshead revenue an annual salary of £100, which was by 1763, however, reduced to £80.<sup>4</sup>

There were but few forts in the colony. The five in ex-

<sup>1</sup> *Dinwiddie Papers*, vol. ii, p. 110, n.; Channing, pp. 44, 45.

<sup>2</sup> *Cal. St. P. Col., 1677-1680*, no. 1508; Bruce, *Instit. Hist. of Va.* vol. ii, p. 323.

<sup>3</sup> *Journal Council of Va.*, MS., 1721-1734, pp. 349, 457; *Cal. St. P. Treas. Papers, 1731-1734*, no. 152, p. 417.

<sup>4</sup> *Dinwiddie Papers*, vol. ii, pp. 344, 390; *Va. Mag. Hist. and Biog.*, vol. iii, pp. 119, 122; Fauquier to the Board of Trade, in *British Museum, King's MSS.*, no. 205, p. 509.

istence in 1671 seem to have been the largest number by that time established. The five forts, or batteries as they were called, which were still of service in 1726 were supplied with one gunner each, and ammunition was furnished from the magazine at the capital.<sup>1</sup> This number was later reduced, for in 1755, according to Dinwiddie, there were only three batteries in the colony. In the following year several were established on the frontier.<sup>2</sup> The captain in charge of a fort was appointed by the governor, but the fort at Point Comfort was an exception, for the captain of this fort was for many years a royal appointee.<sup>3</sup>

The governor was the commander-in-chief of the militia, which power was conferred by the royal instructions and recognized by the colonists, but seldom exercised by the governor in person. The members of the Council were appointed the colonels of militia, and were thus the highest military officers next to the governor. The military power of the governor in actual administration was curtailed by the House of Burgesses, which controlled the public funds and could thus withhold military appropriations. As shown elsewhere, that body not only interfered very seriously with the military plans of Dinwiddie, but to a great extent really directed the campaigns.

As the colonists gradually settled the western frontier, the Indians moved beyond the mountains, so that by about 1735, according to Gooch, the Indians of any strength were

<sup>1</sup> The batteries were at Old Point Comfort on James River, Yorktown and Gloucester Point on York River and Corrotoman and Tappahannock on the Rappahannock River. *Journal Council of Va., 1705-1721*, pp. 357, 358; *Fulham MSS., Virginia*, 1st box, no. 7.

<sup>2</sup> Hening, vol. ii, p. 512; vol. vii, p. 17; *Dinwiddie Papers*, vol. i, p. 387. These three were at Old Point Comfort, Yorktown, and Gloucester Point. *C. O.* 324, 16, p. 41.

<sup>3</sup> *Sainsbury Papers, 1606-1740*, p. 59; Bruce, *Instit. Hist. of Va.*, vol. ii, p. 323.

from three to four hundred miles from the inhabitants of the colony, and that those who were tributary to the government were reduced to a small number.<sup>1</sup> Dinwiddie stated in 1755 that the Indians "subject to the rules of this government are much reduced and very inconsiderable." Among these there were only about sixty fighting men.<sup>2</sup> By the time of Fauquier, 1765, the few Indians in the colony were not only very friendly, but also civilized, and some had adopted the dress of the colonists.<sup>3</sup> While there were few Indians in the colony during the period indicated, and they were friendly, still it was necessary earlier to devote much attention to the various matters which arose on account of their presence in the colony and also during the period mentioned on account of the relations existing between those near the frontier and the colonists.

The governor and Council, until near the close of the colonial period, adjusted all such matters so far as they were able, and submitted their action to the home government.<sup>4</sup> The governor and Council were sometimes appealed to by one tribe to protect them from another tribe, their enemy, and to seek to bring about a reconciliation. In some cases such appeals were responded to, and the enemies of the tribe under the protection of the government were warned not to interfere with the tribe thus protected.<sup>5</sup> Indians desiring to visit another tribe were required to secure passes from the governor, and this was also required of the colonists who went among the Indians to trade with

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. iii, p. 120.

<sup>2</sup> *Dinwiddie Papers*, vol. i, p. 388.

<sup>3</sup> *British Museum, King's MSS.*, no. 205, p. 511.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 33, 46, 201, 213; 1721-1734, p. 305.

<sup>5</sup> *Ibid.*, 1705-1721, p. 336; *Cal. Va. St. P.*, vol. ii, pp. 22, 68.

them.<sup>1</sup> It was also necessary to obtain a license from the governor in order for a colonist to keep Indians on his plantation.<sup>2</sup> In some cases deputies were sent by certain tribes, upon request of the governor, for the purpose of consultation. All expenses incurred and presents given to the Indians on such occasions, and the usual expense of forming treaties, were paid by the colony.<sup>3</sup> The government bore, in some cases at least, the expenses so far as actual necessities were concerned of those tribes which emigrated westward.<sup>4</sup> The tribes living near the frontier were required to pay tribute to the government of the colony.<sup>5</sup> This requirement sometimes caused intercolonial complications. The great men of the Meherrin Indians, for example, complained to the governor that the governor of North Carolina had ordered them to pay tribute to that colony. They were tributary to Virginia, and the governor and Council instructed them not to obey any summons from the government of North Carolina without their permission.<sup>6</sup>

It seems that there was an effort made to educate Indian children, and as a special inducement to increase the interest of Indians in education and religion those permitting their children to be educated in the Christian religion were furnished goods cheaper than others. The interest of Spotswood in the development of the Indians intellectually was shown by his sending a schoolmaster to the Saponies and paying him a salary of £50 a year, and making treaties with

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 103.

<sup>2</sup> *Henrico County Records*, 1688-1697.

<sup>3</sup> *Journal Council of Va.*, MS., 1705-1721, pp. 366, 368; 1721-1734, p. 6; *Journal House of Burgesses*, 1761-1765, intro., pp. 40, 53.

<sup>4</sup> *McDonald Papers*, vol. vi, p. 244.

<sup>5</sup> *Ibid.*, p. 157.

<sup>6</sup> *Journal Council of Va.*, MS., 1705-1721, p. 204.

other tribes regarding the instruction of their children in religion. A few Indians attended William and Mary College.<sup>1</sup>

Before 1748 the British government did not have any clearly defined Indian policy, other than to preserve the friendship of the larger tribes, to develop the fur trade, and to pit one tribe against another and thus prevent a union of the larger tribes. After the date mentioned, the Board of Trade, under Halifax, being given more power, devoted much attention to Indian affairs.<sup>2</sup> The British government did not leave the governor and Council to exercise their own discretion in regard to Indian affairs, but kept in touch with conditions in the colony. Every detail of Indian affairs was reported by the governor to the king in Council through the Board of Trade. All treaties, trade relations, land grants, war measures, the amount of the annual presents to the Indians, and in fact all matters relating to them, were forwarded to the home government.<sup>3</sup> In 1756 the Board of Trade adopted for the first time the policy of appointing agents to treat directly with the Indians, instead of leaving such matters to the governor. There were two men appointed by the king and paid out of the royal treasury, and known as superintendents of Indian affairs, one for the northern and the other for the southern colonies.<sup>4</sup> The governor's power over the Indians was

<sup>1</sup> *Dinwiddie Papers*, vol. ii, p. 391; *W. and M. Col. Quart.*, vol. vi, p. 187; *Va. Hist. Reg.*, vol. iv, p. 10; *Fulham MSS., Virginia*, 2nd box, no. 44.

<sup>2</sup> *Plantations General*, vol. xx-xxx.

<sup>3</sup> *Ibid.*, vol. xx, pp. 191, 225; *Journal Board of Trade*, vol. iv, p. 205, vol. xxx, p. 233; *Journal Council of Va.*, MS., 1698-1703, p. 117; 1705-1721, p. 212.

<sup>4</sup> *Dinwiddie Papers*, vol. ii, pp. 539, 671. Sir William Johnson for northern colonies, Edmund Atkins for southern colonies, soon succeeded by John Stuart.



limited by the appointment of the superintendent, but in matters of general concern he was expected to confer with him. The governor not only coöperated with the superintendent but also, on one occasion at least, left the colony in the interest of Indian affairs. In October, 1763, Fauquier attended a conference of the governors of North Carolina, South Carolina and Georgia at Augusta, Georgia, where Superintendent John Stuart was negotiating with Indian chiefs.<sup>1</sup> The governor and the superintendent, of course, coöperated when holding conferences with Indians on the frontier of Virginia.<sup>2</sup> In times of peace both Indians and whites were sometimes killed. The superintendent performed a very valuable service in arranging a compromise in such cases so as to prevent hostilities. The Cherokees accepted in 1768 certain goods as compensation for some of their men killed by whites in Virginia. The superintendent always endeavored to appease their anger and to pacify the spirit of discontent that occasionally manifested itself. He, of course, coöperated with the governor in such matters.<sup>3</sup> Fauquier, writing to the Earl of Halifax (June 14, 1765), stated that the colonists even at that time provoked the Indians by the violation of treaties, and in some instances by murder, especially on the frontier: "The most solemn treaties with our Indian neighbors have been most publicly and notoriously violated. The violators of the treaty and the public peace have been as publicly rescued out of the hands of justice." Fauquier thus censured the colonists for their attitude towards the Indians. The superintendent was given minute instructions in regard to trade with the Indians and was expected to prevent, as far as possible, any trouble between the colonists and the Indians on account of

<sup>1</sup> *C. O.* 5, 65, pp. 500-576.

<sup>2</sup> *C. O.* 5, 67, pp. 179, 205-216, 399-410, 483-486, 491-493; 69, p. 265.

<sup>3</sup> *C. O.* 5, 69, p. 261; 70, p. 135; 225, pp. 4, 14.

trade relations. The governor willingly coöperated with him, as is shown by the following letter from Fauquier to Stuart (May 6, 1767): "Whenever I shall receive any instructions from home on this head, I shall immediately call an Assembly and recommend to them to lay such restraints on the traders as his majesty shall require for the advantage, peace and tranquility of his colonies."<sup>1</sup>

The Assembly exercised a certain degree of restraint on the superintendent in regard to boundary lines and also treaties, as shown by the superintendent's journal and correspondence.<sup>2</sup> During the negotiation of a treaty, the governor, the Assembly and the British government were in communication with the superintendent. In negotiating a treaty regarding the boundary line between Virginia and the Cherokees the colonists desired to change the line as drawn by the superintendent. In his letter (August 3, 1769) to the governor, the superintendent said: "His majesty consents to the above alteration upon condition that the colony of Virginia will make the necessary provision to defray the expense of the negotiation." If Virginia should refuse to do this, then the line already agreed upon with the Cherokees by the treaty of October 14, 1768, would be ratified. Stuart estimated that the cost of running a new line would be £2000 sterling. Continuing he said:

As soon as I shall have been honored with your lordship's opinion and the determination of the House of Burgesses of your province relative to the necessary provision for defraying the expense of this service, I shall agreeably to his majesty's orders proceed upon the business, without loss of time.<sup>3</sup>

<sup>1</sup> *C. O.* 5, 68, pp. 219-222; 70, p. 273.

<sup>2</sup> *C. O.* 5, 70, pp. 153-198, 261-269, 277-359; 71, pp. 107, 209, 317; *Journal House of Burgesses, 1761-1765*, intro., p. 24; 1766-1769, pp. 26, 30-37; 1770-1772, pp. 9, 14, 226; *Va. Mag. Hist. and Biog.*, vol. ix, pp. 360-364; vol. xii, p. 354.

<sup>3</sup> *C. O.* 5, 70, p. 587.

In a letter under date of December 18, 1768, to Stuart, Botetourt said:

I have enclosed copies of an address and memorial from the House of Burgesses, by which you will perceive that they have agreed to the requisition I have had the honor to make to them by command from the king, but at the same time that they pray for a more extended boundary than that you have recommended, and entreat that I will again implore his majesty to reconsider the merits of their humble petition. In consequence of that their desire I have written to the Earl of Hillsborough and earnestly solicited that they may be indulged to the extent of their wishes. I have likewise acquainted him that I have entreated you not to take a step towards running any line until you shall have had fresh instructions from his lordship.<sup>1</sup>

Botetourt favored the plan of the colonists to purchase more land from the Indians which would make it possible to extend the boundary, and was thanked by the House of Burgesses for approving the report of the Board of Trade favoring such an extension. Stuart, in his correspondence with Botetourt in regard to the matter, was very courteous and showed consideration and respect for the House. The reason which he gave for not endorsing the proposed change was that the Indians had complained of the encroachment of the colonists upon their territory and intimated that they would no longer submit.<sup>2</sup> In a letter of June 21, 1770, Botetourt instructed Stuart to enter upon the negotiations, as the king approved of it:

Being authorized by the enclosed address of the House of Burgesses, his majesty's permission, and your letter of August 3, 1769, I earnestly entreat that you do immediately enter upon

<sup>1</sup> *C. O.* 5, 71, p. 107.

<sup>2</sup> *C. O.* 5, 71, pp. 111, 121; 241, p. 279.

a treaty with the Cherokees in order to obtain as soon as possible for this dominion a cession of those lands to which his majesty has been pleased to consent. The whole expense must come within the £2500 sterling, which have been granted by this government, in consequence of your own estimate.<sup>1</sup>

It was the duty of the superintendent to see that the colonists respected the boundary and did not antagonize the Indians by ignoring it.<sup>2</sup> The relations of Superintendent John Stuart with the colony were pleasant. By 1770 he was appointed to membership in the Council, but owing to the extensive territory under his jurisdiction he could not always meet with that body. Botetourt, writing to him, said: "I congratulate you upon being appointed a councillor extraordinary."<sup>3</sup>

The superintendent was required to forward to the home government a full account of Indian affairs, and especially all treaties, in order that they might be passed on before being put into effect.<sup>4</sup> Since some of the treaties were rather expensive in their negotiation, it was for this as well as for other reasons that they were always submitted to the home government. The Treaty of Lancaster (1744) cost £1260 2s. 11d. A warrant was sent to the governor by the lords of the treasury, directing him to issue his warrant to the receiver-general to pay that amount out of the quit-rents. The commissioners appointed by the colony to co-operate with the superintendent in negotiating this treaty received £700. Upon the suggestion of Dinwiddie, the Board of Trade proposed to the Privy Council that £1000 be granted out of the revenue of two shillings per hogshead

<sup>1</sup> *C. O.* 5, 71, p. 341.

<sup>2</sup> *C. O.* 5, 225, p. 14.

<sup>3</sup> *C. O.* 5, 71, p. 341.

<sup>4</sup> *C. O.* 5, 67, pp. 89-112.

for presents for the Indians on the frontier of the colony, and the treasury warrant for this purpose was issued May 10, 1753.<sup>1</sup> The cost of drawing up the treaty between the Catawbas and the Cherokees in 1756 was £1319 15s. 8d., which was paid out of the quit-rents upon a warrant from the lords of the treasury. This amount did not, however, include £700 paid for presents, which was a sum sent from England for the service of the crown, and also the compensation of the commissioners.<sup>2</sup> Dinwiddie, writing (August 6, 1757) to the Earl of Loudoun, the governor-in-chief, stated that the people complained of the "great expense of maintaining the Indians and giving them large presents," which was done for the "general service of the colony," and suggested that the expense be apportioned among the colonies. He stated, further, that the soldiers sent to the frontier had taken £400, and that the Assembly had voted (June, 1757) £3000 to supply the Indians with provisions, clothes and presents, but that this amount was not sufficient.<sup>3</sup> Warrants countersigned by the lords of the treasury were on some occasions sent to the governor authorizing him to use the quit-rents for meeting the expense of furnishing the Indians with presents.<sup>4</sup> The colony and the British government both made appropriations for the expenses of treaties and furnishing the Indians with presents. The salaries of the superintendent and his deputies were paid by the British government. The expenses

<sup>1</sup> *British Museum Add. MSS.*, no. 32731, ff. 430, 434.

<sup>2</sup> *Dinwiddie Papers*, vol. ii, p. 465; *Cal. Va. St. P.*, vol. i, p. 251. There were usually one or more representatives of the colony appointed to act in conjunction with the superintendent in negotiating treaties.

<sup>3</sup> *Journal House of Burgesses, 1756-1758*, pp. 510, 523; *Dinwiddie Papers*, vol. ii, pp. 606, 616, 660; *Hening*, vol. vii, p. 76.

<sup>4</sup> *Cal. St. P. Treas. Papers, 1742-1745*, p. 677.



of the superintendent of the southern district were considered in 1766 excessive by the British government.<sup>1</sup>

The confidence reposed in certain Indians was shown by their being employed in the military service and compensated therefor.<sup>2</sup> The expense attached to this practice was not at first of much consequence, but later was regarded as a real burden on the colony. For several reasons, however, the British government favored this plan, as it served to continue the alliances with the Indians, especially during the French and Indian War.<sup>3</sup>

The Indian trade was a matter of much concern to the home government, because of its vital relation to the peace of the colony and to trade in general. The governor and the superintendent were instructed, from time to time, as to this trade.<sup>4</sup> The British government determined, especi-

<sup>1</sup> Salary of Superintendent John Stuart and his deputies for 1765, (not including Indian presents, £2524. 3s. 4d.)

"Ordinary annual expense in southern department of Indian affairs, April 14, 1769."

|   |       |
|---|-------|
| Deputy in West Florida £200 a year .....                          | £200  |
| Deputy in northern part of district, £10 a day .....              | 182   |
| Interpreter in West Florida £4/8 a day .....                      | 85    |
| Interpreter in Creek Nation .....                                 | 60    |
| Interpreter in Cherokee Nation .....                              | 60    |
| Interpreter attending superintendent or deputy occasionally ..... | 60    |
|   | <hr/> |
|   | 647   |
| Goods for presents annually .....                                 | 1500  |
| Rum, carriage, provisions and all other contingencies .....       | 853   |
|   | <hr/> |
|   | 3000  |

(*C. O.* 5, 70, p. 427; 216, p. 64; 225, p. 14.)

<sup>2</sup> Hening, vol. iii, pp. 83, 84; vol. vii, p. 165; *Cal. Va. St. P.*, vol. i, pp. 43, 44.

<sup>3</sup> *Dinwiddie Papers*, vol. ii, pp. 270, 283, 605; *Journal House of Burgesses*, 1756-1758, p. 497; 1758-1761, p. 263.

<sup>4</sup> *Journal Board of Trade*, vol. iv, p. 205; *Journal Council of Va.*, MS., 1698-1703, p. 117; Instructions to the governors.

ally after 1755, when it had assumed control over the political relations with the Indians, to extend that control to commercial relations.<sup>1</sup> There were about thirty English merchants who were interested in the Indian trade in Virginia. An act of the Assembly in 1758 for encouraging this trade appropriated £5000 for this purpose.<sup>2</sup> This trade was concerned mostly with skins, ten thousand of which were at a certain time exported from the colony to England in one year.<sup>3</sup> The decrease in the trade in skins and furs was due to the export duty on them, the Indian wars, the oppressive measures of the London merchants, and the interference of North Carolina in the Indian trade.<sup>4</sup> There was a considerable intercolonial rivalry in regard to the Indian trade, especially between Virginia and the Carolinas.<sup>5</sup> Since this trade was so important in its bearing upon the friendly relations between the colonists and the Indians, and because of the necessity of forming alliances with the Indians, it was quite imperative that such an official as the superintendent of Indian affairs should be appointed.

There were from 1633 to 1734 from one to three interpreters, who rendered valuable service in the negotiations between the Indians and the government of the colony.<sup>6</sup> By 1734, owing to the fact that the tributary Indians in

<sup>1</sup> Beer, *Colonial Policy of Great Britain, 1760-1765*, in Report of the American Historical Association, 1906, vol. i, p. 186.

<sup>2</sup> *Journal Board of Trade*, vol. xxvi, p. 57; *Sainsbury Papers*, vol. iii, p. 545; *Hening*, vol. vii, p. 354.

<sup>3</sup> *Journal Board of Trade*, vol. xxvi, p. 55.

<sup>4</sup> *Va. Mag. Hist. and Biog.*, vol. xvi, p. 78; *Byrd MSS.*, vol. ii, pp. 165-170.

<sup>5</sup> *Greene, Provincial America*, p. 192.

<sup>6</sup> *Hening*, vol. i, p. 222; vol. ii, p. 138; *Journal House of Burgesses, 1659/60-1693*, p. 129; 1700-1701, p. 256; 1710-1712, p. 266; *Sainsbury Papers*, vol. ix, p. 486.

many cases spoke the English language, the services of an interpreter were not so often needed.<sup>1</sup> There were, however, from time to time, occasions when it was necessary to call upon the interpreter.<sup>2</sup> The superintendent of Indian affairs employed his own interpreters. While after the date mentioned the interpreter of the colony was not regularly employed, still in the instructions to the governors it was specified that to prevent trouble with the Indians no grant for any land purchased of Indians should be issued unless such land were publicly surveyed in the presence of the Indians concerned and the interpreter.<sup>3</sup> The interpreter was at first appointed by act of Assembly, but by about 1690 was appointed by the governor and Council, and received his instructions from them.<sup>4</sup>

The duties performed by the interpreter are indicated by the name of the office. In addition to his services in the negotiation of treaties, he accompanied the "great men" of certain tribes before the governor and Council for a conference, and on some occasions to answer for the murder of certain members of other tribes. He was sent to acquaint one tribe of the protection granted their enemy, and to warn them against interfering with them, and it was through him that the tributary Indians appealed to the governor and Council when they desired the intervention of the government against their enemies.<sup>5</sup> He performed valuable service in ascertaining the number of Indians, and how much land they held, and it was through him that requests were

<sup>1</sup> Hening, vol. iv, p. 461.

<sup>2</sup> *Dinwiddie Papers*, vol. i, p. 6; *C. O.* 5, 61, p. 49; 69, p. 171.

<sup>3</sup> Instructions to the governors.

<sup>4</sup> Hening, vol. i, pp. 222, 328; vol. ii, p. 138; *Journal Council of Va., MS., 1705-1721*, p. 48; *Cal. St. P. Col., 1689-1692*, no. 1509; 1693-1696, no. 2191; 1697-1698, no. 17.

<sup>5</sup> *Journal Council of Va., MS., 1705-1721*, pp. 117, 182, 336, 338.

sent by Indians to occupy certain lands.<sup>1</sup> When a complaint was made by the members of a certain tribe that some of their number had been induced to take up their abode with the whites, it was the interpreter who conveyed the Indians, thus deserting, before the Council.<sup>2</sup> The annual salary of the interpreter, which was at first one thousand pounds of tobacco, was gradually increased to eight thousand pounds, but by 1688 was reduced to four thousand pounds and was paid by the Assembly.<sup>3</sup> There was no prohibition as to his accepting gifts.<sup>4</sup>

In the matter of intercolonial relations, the governor was instructed to assist, in case of distress, any other British colony, and to avail himself of every opportunity of conferring with the governors of other colonies in America, in order that the royal service might thereby be advanced.<sup>5</sup> Correspondence between them increased quite noticeably after about 1700, as the colonies increased in importance.<sup>6</sup> The governor of Virginia, while serving the British government especially in that colony, still felt it was his duty to promote the interests of the crown in the other colonies whenever it was in his power to do so. The action of the colony in this connection was largely voluntary, for it was recognized that the home government could not compel the colonists to undertake an expedition beyond the limits of their respective colony.<sup>7</sup>

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 14.

<sup>2</sup> *Ibid.*, p. 103.

<sup>3</sup> *Ibid.*, p. 282; *Journal House of Burgesses*, 1702-1705, p. 96; 1727-1734, pp. 12, 15; Hening, vol. i, pp. 222, 328; *Executive Papers*, 1677-1683.

<sup>4</sup> *Journal Council of Va.*, MS., 1705-1721, p. 336.

<sup>5</sup> *Journal Council of Va.*, MS., 1698-1703, pp. 103, 113, 159; *McDonald Papers*, vol. vi, pp. 148, 225; Instructions to the governors.

<sup>6</sup> *Cal. Va. St. P.*, vol. i, p. 78; *Dinwiddie Papers*, vol. i, pp. 60-69, 79-82, 116-125, 438-522.

<sup>7</sup> Beer, *Colonial Policy of Great Britain*, p. 179.

In 1665 ninety-six men were sent from Virginia to join the expedition from Jamaica against the Dutch. One hundred and fifty men were sent in 1715 from Virginia to aid South Carolina during the Indian war in the colony, and in 1740 troops were sent to assist the colonists in Georgia against the Spaniards, although there were apprehensions of a Spanish invasion of Virginia, of an Indian attack and also of slave insurrection within the colony. Four companies were sent to South Carolina in 1757 in response to a call for help in another war with the Indians.<sup>1</sup> In 1740 troops were sent from the colonies to assist the regular British soldiers in an offensive war against the Spaniards at Carthagena. Gooch raised four hundred men as the quota from Virginia, and the Assembly voted £5000 for their support to be paid out of the treasury, and also by an additional tax on imported slaves.<sup>2</sup> Ex-Governor Spotswood was appointed to command the four colonial battalions of 3000 men, which included the Virginia troops, but dying suddenly on the eve of embarkation, Gooch assumed command and went with them to attack Carthagena, a seaport on the northern coast of South America.<sup>3</sup> It was also during his administration (1745) that the Assembly appropriated £4000 towards raising the quota of troops apportioned Virginia for the intended invasion of Canada and £600 for provisions and quarters for British soldiers bound for Canada, but compelled to stop in Virginia on account

<sup>1</sup> *Journal Council of Va.*, MS., 1705-1721, p. 241; *Cal. St. P. Col.*, 1661-1668, no. 1088; *Journal House of Burgesses*, 1756-1758, p. 427; *C. O.* 5, 1293, pp. 35, 105, 106, 110; *Va. Mag. Hist. and Biog.*, vol. xvii, p. 43.

<sup>2</sup> This sum exceeded the surplus in the treasury, and the deficit was borrowed from colonists at six per cent. (Hening, vol. v, pp. 92, 122.)

<sup>3</sup> *Cal. St. P. Treas. Books and Papers*, 1742-1745, pp. 19, 321; *Va. Mag. Hist. and Biog.*, vol. iii, p. 113.



of storms.<sup>1</sup> Gooch was appointed a brigadier-general in this army but declined to serve. His willingness further to conserve British interests outside of his own colony was shown by his granting the request of Governor Shirley for supplies and sending £1273 11s. 2d. to Cape Breton for provisions for the garrison.<sup>2</sup> Of the 1010 men raised in 1754 by New York, Maryland, Virginia, North Carolina, and South Carolina for the war with the French, 300 were furnished by Virginia.<sup>3</sup> As the French and Indian War progressed many more troops were furnished by Virginia. The appropriations made and the total cost of the war to the colony are given in a previous chapter.

The militia was sufficient for the defense of the colony except in extraordinary cases. Colonel Robert Quarry, writing (October 15, 1703) to the Board of Trade, made the following statement regarding the militia of Virginia:

The militia of this province is under far better regulation than any other government on the main; it is put into the hands of very good officers, and his excellency doth by himself exercise the men very frequently when time can be best spared without the least injury to the planters.

Colonel Quarry, as surveyor-general of the customs, was required by the duties of his office to go from time to time to the colonies from Pennsylvania to the West Indies, so that this statement in regard to the militia in Virginia was made by one in a position to make the above comparison.<sup>4</sup> It is, however, doubted whether the militia was as efficient as the above would indicate. It is, nevertheless, true that the

<sup>1</sup> *Journal House of Burgesses, 1742-1747*, pp. 221, 231; 1748-1749, pp. 265, 268; Hening, vol. v, p. 401.

<sup>2</sup> *Journal Board of Trade*, vol. liv, p. 25.

<sup>3</sup> *Dinwiddie Papers*, vol. i, p. 257.

<sup>4</sup> *C. O.* 324, 8, p. 311.

colony not only defended itself against the Indians, but also rendered assistance to neighboring colonies, and even to the regular British troops engaged in an attack upon a Spanish port on the northern coast of South America. It was the policy of the home government, as has been stated, to leave the colony to its own defense against the Indians, and also against the Spanish and French, unless there should be danger of a serious war. The service rendered by the Virginia militia during the French and Indian War would indicate, in some degree at least, the efficiency of the military system of the colony. There were no regular British troops stationed in the colony before or after that war. There were, however, for a brief time after the close of the war some regulars under the commander-in-chief of all the British troops in America, who were guarding the frontier in general and not especially the Virginia frontier.<sup>1</sup>

<sup>1</sup> *Journal House of Burgesses, 1761-1765*, pp. 203, 204, 216.

## CONCLUSION

THE effort of the Assembly to improve the personnel of the officials of the colony to the extent of requiring three years' residence in the colony before holding office seems to have met with the approval of the home government, for the law passed in 1676 for this purpose was, to some extent at least, effective.<sup>1</sup> As the non-English population increased there was on the part of the home government a desire to limit the filling of certain offices to native-born British subjects. In the instructions to the governors from Nott (1705) to Dunmore (1771) it was specified that all places of trust in the courts of law, or in what related to the treasury, should be filled by native-born subjects of Great Britain, Ireland, or the colonies.<sup>2</sup> There was in 1702, according to the statement of Nicholson, great need of men of ability to fill the offices.<sup>3</sup> The governors in their instructions were cautioned to exercise much care in selecting officials, in order that "men of estate and abilities," and not "poor men in debt," should be chosen.<sup>4</sup>

The officials did not usually live at the seat of government, and notwithstanding the approval of the governor's recommendation by the home government to have those whose duties were largely performed at the capital to re-

<sup>1</sup> Hening, vol. ii, pp. 354, 390; vol. iii, pp. 251-252; *Spotswood Letters*, vol. i, p. 60.

<sup>2</sup> Instructions to the governors.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 160.

<sup>4</sup> *Ibid.*, p. 15; *McDonald Papers*, vol. vi, pp. 112, 240; Instructions to the governors.

move there, nothing seems to have been done in regard to the matter until some time rather late in the eighteenth century.<sup>1</sup> In the instructions to the governor after about 1683, a clause was inserted that no official was to execute more offices than one by deputy. He was ordered to report to the home government on the several offices granted under the great seal of Great Britain, and also those under the seal of the colony, as to the absence of patentees and their appointing "deputies not fit to officiate in their stead," and was also empowered to suspend any of the patentees or deputies, and report the matter to the home government.<sup>2</sup> The system of farming-out the offices occasioned the including of a clause in the instructions to the governors from Nicholson (1698) to Dunmore (1771) to prevent the inconvenience arising from the execution of patent offices by deputies, "either unqualified or too much inclined by the high rents they pay unto the patentees to make indirect advantage of their respective places." All patent officers were, therefore, required actually to reside at the place where their official duties were performed, and to execute their offices in person, unless prevented by sickness.<sup>3</sup>

Complaints were sometimes made of the maladministration of the officials of the colony. Nicholson, writing to the Council of Trade and Plantations in 1699, stated very plainly why the most important officials of the colony did not fill their offices more satisfactorily. He said that it had been the custom for the secretary, the auditor, the collectors, and the naval officers to be councillors, "who did not think themselves obliged to attend to their offices, but thought they were given them to make a profit on, and com-

<sup>1</sup> *Journal Council of Va.*, MS., 1698-1703, p. 114; *Sainsbury Papers*, 1625-1715, p. 114.

<sup>2</sup> Instructions to the governors.

<sup>3</sup> *Journal Council of Va.*, MS., 1698-1703, p. 68.

pensate the charge and trouble of attending councils.”<sup>1</sup> Nicholson, it is true, had antagonized the Council, which fact must be remembered in estimating this statement, still there were conditions which, to some extent at least, justified it. The actual sale of so important an office as the receiver-generalship seems to have met with the approval of the governor and other officials of the colony. In 1716 William Byrd, the receiver-general, sold that office to James Roscow for £500.<sup>2</sup> In the seventeenth and eighteenth centuries it was customary for one man to hold several offices at the same time. It was the usual practice for councillors to monopolize some of the most profitable offices in the colony, but this custom was not confined to them, for those holding less important positions were also in the habit of holding from three to six offices at the same time. The county clerkships, for example, which were usually held by men of wealth and influence, were frequently combined with the offices of sheriff, constable, escheator, surveyor, and notary public, all of which were places of profit.<sup>3</sup> A strik-

<sup>1</sup> *Cal. St. P. Col.*, 1699, p. 313.

<sup>2</sup> *Va. Mag. Hist. and Biog.*, vol. xvii, p. 155.

<sup>3</sup> Bruce, *Instit. Hist. of Va.*, vol. i, pp. 590, 596.

Edward Hill was in 1699 councillor, collector, naval officer, and judge of the vice-admiralty court.

Edmund Jennings in 1699 councillor, secretary, collector, and naval officer.

Edmund Scarborough in 1702, coroner, escheator, justice of the peace in Accomac county, and surveyor in Accomac and Northampton counties.

William Randolph in 1702, coroner, escheator, and justice of the peace.

Thomas Milner in 1702, justice of the peace, surveyor, and burgess.

Henry Applethwaite in 1702, justice of the peace, coroner and burgess.

Robert Carter was county lieutenant in King George, Lancaster, Northumberland, Richmond, Stafford, and Westmoreland



ing example of an official appointing himself to another office was furnished by Miles Cary, surveyor-general, who appointed himself surveyor of York and Gloucester counties, while he was also naval officer of York River district.<sup>1</sup>

That the members of the House of Burgesses might not be so closely identified with the royal government in the colony as to prevent their fully representing the interests of the people in the legislature, it was near the close of the colonial period specified by act of Assembly that any burgess who accepted "any office of profit whatsoever" would thereby forfeit his seat.<sup>2</sup> A comparison of the officials in England with those in the colony shows that in many cases the British offices were reproduced in the colony with a striking similarity as to their powers and duties.

There were in the colony altogether sixteen royal offices other than the governorship and the Council. There were, in fact, more than sixteen officials; for example, there were six naval officers, six collectors, and two or more searchers. The Council, however, in addition to serving as the advisory board of the governor, held, as has been shown, certain of the more important of these offices, namely, those of secretary, auditor, receiver-general, and, for a time, of collectors and naval officers. Of the sixteen offices, seven were established before 1700 and nine after this date. These offices were all royal at the time of their establishment except one, and this was very soon made so. There were four of these official positions the commissions for which were

counties and was an influential councillor. Other county lieutenants who were also councillors and justices of the peace served more than one county. *Fulham MSS., Virginia*, 1st box, no. 7; *Va. Mag. Hist. and Biog.*, vol. i, pp. 364-369.

<sup>1</sup> *Va. Mag. Hist. and Biog.*, vol. i, pp. 241, 245.

<sup>2</sup> *Va. Mag. Hist. and Biog.*, vol. i, pp. 364-369; Hening, vol. viii, p. 317.

issued under the great seal; two of them, however, did not have such a commission until very late in the colonial period. Three other commissions were issued under the royal sign manual. The commissions to those filling four other offices were issued by the commissioners of the customs, and to those in five other offices were issued by the lords of the admiralty. The tendency of the home government was, therefore, to continue, as far as practicable, all the royal offices in the colony and to increase the number of them. As far as could be ascertained, those who held these sixteen offices were usually all residents of the colony except three — the surveyor-general of the customs, the superintendent of Indian affairs, and the postmaster. It thus seems that the British government, in continuing its policy in regard to issuing royal commissions to certain officials, preferred for these positions those who lived in the colony. There were, perhaps, three reasons for this. In most cases the officials of the colony could not depend solely on the remuneration of their offices, and this fact, no doubt, prevented men of ability in England from desiring to accept official positions in a purely agricultural colony. Since the government of the colony was to be conducted as economically as possible, it was far less expensive to have men in these offices whose interests were so identified with the colony that they could afford to fill them without requiring much compensation. It may also have been thought that such men would have a personal interest in making the administration such as to conduce to the highest good and efficiency. How far the appointment of colonists was deemed expedient as a preventive in case of any possible demand for self-government, we cannot say. But since such a policy has been strongly endorsed by governments with colonial possessions, it is quite reasonable to conclude that it was maintained that officials holding their commissions

from the home government would help to withstand any attempt by the colonists to withdraw their allegiance from that government. There seems to have been no special opposition to royal officials as such, for the colonists in fact were always very desirous of royal appointments. Even near the Revolution those holding such commissions were not criticized, for until the colony declared its independence these officials were recognized. So it was the general policy of the British government rather than the royal officials of the colony that provoked the colonists to open revolt.

There were altogether fourteen offices which may be termed provincial in contradistinction to those offices which were filled by royal appointment. There were, of course, more than fourteen positions to be filled, for there was a sheriff, from eight to twenty justices of the peace, and from one to four coroners in each county. There were four escheators, about twelve collectors of the duties on liquors and on skins and furs, about five river pilots, and over one hundred inspectors of tobacco. Of the fourteen provincial offices mentioned, ten were filled by the appointment of the governor and Council. Of the other four offices, the solicitor of Virginia affairs was really the appointee of the Council; the treasurer after 1691 was elected by the House of Burgesses; the surveyor-general after 1692 was appointed by William and Mary College; and the constables were appointed by the county court. The appointive power of the governor was thus apparently quite extensive so far as the number of persons commissioned was concerned, but the offices filled by his appointment were not the most important offices of the colony, and the Council shared this appointive power with him. It is to be remembered that the more important offices were filled by royal appointment, and that in many cases the councillors either held the positions themselves or in a measure dictated the nominations.

It will be noticed that two of the fourteen provincial offices were originally royal, but near the close of the seventeenth century were made provincial; namely, that of the surveyor-general which in 1692 was bestowed on the College, and that of treasurer which after 1691 was filled by the House of Burgesses. It should be mentioned here that in the case of the attorney-general, included with the royal officials, the office was at first royal, then for several years after, about 1700, was provincial, and near the close of the colonial period was again royal.

It is quite apparent from all that has been shown that notwithstanding the instances just cited, the tendency was to change provincial offices into royal rather than to decrease the number of those that were already royal. For of the sixteen royal offices only one was changed to provincial, and this, the attorney-general, was again made royal, while in the case of the others the change to royal was either made or the office was royal when established. It was unquestionably the purpose of the British government to maintain a constant supervision of not only the officials holding royal commissions, but also the provincial appointees, for the governor, as the highest representative of royal authority, was required to furnish the home government with an account of all appointments.

The governor was the representative of the king, but did not possess absolute power. He was to exercise his own initiative only in minor affairs, as practically all matters were to be referred to the home government. He was also greatly circumscribed in his actions by the minute instructions furnished when he assumed the governorship, and by the constant communication with the home government. The self-governing spirit began to assert itself about 1700, and it was not always an easy matter to execute the royal instructions minutely. Not only the House of Burgesses,

but also the Council, which was the governor's cabinet on some occasions after that date, seriously interfered with the executive in the administration of the government. The controversies between certain governors and the Council, and the persistent opposition of the House and even the assumption by that body of certain executive functions, show that there was a strong tendency towards self-government. It would not be correct to conclude that the growing discontent of the colonists was due altogether to their desire for self-government, for the governors themselves determined very largely to what extent the popular spirit expressed itself. The royal governor was not disliked because he was an appointee of the king, for the colonists strongly maintained their allegiance to the crown, and whenever the governor showed a disposition really to serve the people there was quietude and prosperity. But when a dictatorial governor attempted to force the colonists to comply with the royal instructions, regardless of circumstances, it was quite natural that they desired relief from a system which placed such men over them. Of the nine governors who served after 1700, five were quite successful in making their administrations prosperous and in winning the esteem of the colonists. It is worthy of note that one of these (Gooch) resigned after twenty-two years of service, in order to return to England, and the other four died in office. It should also be recalled that one of these four (Botetourt) immediately preceded Dunmore, soon after whose appointment the colony revolted. Of the four who, owing to their dictatorial policy, experienced the greatest difficulty in executing the duties of the office, two were removed by the home government, another resigned in order to avoid removal, and another (Dunmore) was serving when the Revolution began.

The successful governors sought to execute the royal in-



structions only so far as conditions in the colony made it advisable to do so. They were loyal to British interests but they did not antagonize the colonists by making unnecessary demands of them. It was often quite difficult to fill the governorship with satisfaction both to the colonists and the home government, yet these five governors were judicious and tactful enough to understand how to do it. To please the colonists, to fill the governorship with satisfaction to the home government, and to gratify the selfish demands of the British merchants was a delicate and difficult task to perform, but it seems that these governors did it. This is accounted for by the fact that so long as the governor could keep the colony quiet and prosperous, and trade from the colony was successful, thus increasing the royal revenues, and furnishing the merchants a lucrative return for their investment, little was said about the royal instructions, the royal prerogative or the popular spirit of the colonists. Thus in theory the governor, the highest official of the British government in the colony, was expected to wield much power under royal supervision, and so to dominate the administration as to make his influence paramount. He was to conserve the interests of the British government regardless of the conditions in the colony. In practice, however, it was found impossible for him to carry out this policy. It has been seen how his power was encroached upon by both the Council and the House, and how he was compelled to submit, regardless of the explicit instructions from the home government.

The instructions to the governors indicate that there was a determination on the part of the British government to enforce a policy which was practically uniform from about 1700 to 1775. Since the governor was the highest representative of royal authority in the colony, the home government expected him to execute his instructions and to

promote in every way its interests. In the case of certain governors who really attempted to carry out their instructions, it was found that much opposition was encountered. Such opposition was usually due, not only to the instructions themselves, but also to the manner in which a dictatorial executive sought to enforce them. For whenever the governor showed a disposition to carry out his instructions only so far as it seemed practicable, the colonists usually responded to this expression of his desire really to meet the needs of the colony and supported him. The British government could not fail to recognize the gradual decline of royal authority in the hands of the chief executive, and was therefore inclined to a more energetic plan of compelling the colonists to conform to the policy of that government. Since the governor himself was not, in certain cases, very desirous of obeying minutely royal instructions, it was not strange that others holding royal commissions and also the provincial appointees should be somewhat lax in the observance of them. The tendency of the home government to increase rather than to diminish the number of those holding royal commissions did not check the decline of royal authority in the colony.

The Council was, in theory, the advisory board to the governor, but in practice it wielded much power and influence in the administration of the government. Although the royal instructions specified that the Council should occupy a subordinate position, still the British government could not have failed to have known of the real power of that body. The royal commissions of the councillors, their appointments to the most important and lucrative offices, their executive, legislative and judicial functions, their social position in the colony on account of their wealth and aristocratic connections, and the dignity and the privileges of the councillorship, made it possible for them to exert an in-

fluence in the administration of affairs which could not be ignored by the governor. The removal of certain governors was due, in fact, very largely to the opposition of the Council. Notwithstanding the complaints of the Council against certain governors, and the removal of some of them on account of controversies with that body, there seems to have been no desire on the part of the British government to discontinue it. The willingness of the Council to work harmoniously with a governor who was not dictatorial, but sincerely interested in the prosperity of the colony, no doubt made a favorable impression on the home government. It was recognized that it would be a difficult matter for the governor to attempt to execute the royal instructions without such a body. The British government, doubtless, justified the continuance of the Council on the supposition that the royal commissions of the councillors, their important part in the administration of the government, and their close association with the governor would influence them to support the royal executive in his opposition to the spirit of popular government which occasionally asserted itself. This was, however, not the case, for the interests of the councillors were with the colonists rather than with the British government. There were some occasions, of course, when the Council did not thoroughly endorse the popular measures as advocated by the House of Burgesses, but in the controversies between the colony and the home government which were of vital importance, the Council gave its support to the colony. There was, as might be expected, some objection on the part of the colonists to certain acts of the Council, but there was no general opposition to that small, but influential body into whose hands so much power had been placed.

The intermediate position between royal and provincial functions as exercised by the Council is thus apparent.

While holding royal commissions as the members of the governor's advisory board, the councillors were expected to stand between him and the colonists and to favor the interests of the British government, rather than those of the colony, still as they were themselves colonists and owed their success to certain conditions existing in the colony, they quite naturally were interested in the promotion of provincial affairs. The failure of the Council to fulfil the expectation of the British government was thus due, not so much to the popular spirit of the colonists as to an error in judgment on the part of the officials of the British government, for they failed to recognize in regard to the Council that inherent quality in human nature known as self-interest. The fact stands out prominently that although the governor was the highest royal official, and was therefore expected to represent the king and the interests of the British government, still the Council assumed part of the executive power, and also took a personal part in the actual administration of affairs through the several important offices which they held. In addition to thus encroaching upon the governor, the Council dominated the judiciary to a marked degree, and to a certain extent influenced legislation by exerting its power over the House of Burgesses.

The administration of justice was greatly influenced by the governor and Council, who constituted the highest tribunal in the colony. There were certain judicial officials who held royal commissions, but those appointed by the governor outnumbered them, and were more regularly and constantly employed in performing the functions of their respective offices. The power of the governor over the judiciary was thus, so far as appointment was concerned, and also through the General Court, quite apparent. The British government sought to exercise a general supervision of the judicial affairs of the colony, and instructed the gov-

ernors to report fully as to the whole system of procedure, and also upon the cases still pending in the courts. Many cases were appealed from the General Court to the crown, and were examined by the committee appointed for that purpose. Although justice was somewhat delayed owing to the distance to England and to the large number of cases appealed from the other colonies, still, generally speaking, the colonists were given a moderately satisfactory administration.

The militia was sufficient for the defense of the colony. It was the policy of the home government to leave the colony to its own defense against the Indians, and also the Spanish and the French, unless there should be danger of a serious war. The colony not only provided for its own defense, but also rendered assistance to neighboring colonies, and to the regular British troops in the West Indies and Canada, and to those engaged in an attack upon a Spanish port on the northern coast of South America. The efficiency of the military system of the colony was shown by the valuable services rendered in the cases just mentioned. The Virginia militia during the French and Indian War was, however, to some extent declared inefficient. The maintenance of the militia was borne not only by the government of the colony, but also by the colonists themselves. They purchased their own military supplies, in addition to supporting the militia of the colony and paying the special public levies laid for the expenses of the more important wars. In view of the services of the military system, its support by the colonists and their loyalty to British interests, it is not difficult to understand the spirit of resistance to British oppression which now and then asserted itself, and finally culminated in open revolt.

A study of the records kept in the colony, and also by the customs officials in England, shows that the colonists paid



quite regularly the import and export duties and the quit-rents. The large sums annually collected from these sources were sufficient to meet the ordinary expenses of the government. The quit-rents were, moreover, regularly forwarded to the British exchequer, unless with royal permission some of this revenue was occasionally retained in the colony for certain contingent charges of the government. There was in addition to these revenues, which were used for the maintenance of the royal government, a system of provincial revenues raised exclusively for local purposes. The colonists thus not only bore the expenses of maintaining the royal government in the colony but also paid the provincial revenues. The special emphasis placed upon trade by the British government and the demands upon the colonists in this respect indicate that the general policy of that government was largely commercial. The colony was the most important of the British Empire and paid into the royal exchequer more than any other colony and, until late in the colonial period, more than all others combined. Any decrease in the customs from the colony was, therefore, readily attributed by the home government to the inefficiency of the officials of the colony. Frauds in the customs, both in Virginia and in the English ports, and the negligence as to the collecting of quit-rents in the colony, served to shake the confidence of the home government in the governor and the other officials. In the instructions to the governor, especially from about 1683 to the Revolution, very great stress was laid on frauds in the revenues, and he was to make a special effort to prevent such irregularities. The Assembly also passed acts for preventing these evasions. Notwithstanding the effort made by the British government and by the legislature of the colony to prevent evasion of the customs, the fraudulent practice continued to some extent. Evasion of the revenues was, however, the

exception rather than the rule. The unfaithfulness or the negligence of revenue officials, no doubt, influenced the British government to adopt decidedly aggressive measures in dealing with the colony. This was not, however, because the expenses of the colony were thereby being thrown upon the home government, since this was not the case, for the colony was, as has been shown, self-supporting.

The merchants and the interests which they controlled had no little share in the oppressive measures of the British government, and were responsible in large measure for the expressions of dissatisfaction on the part of the colonists. The merchants had much influence with the Board of Trade regarding colonial affairs, especially with respect to trade, and frequently in regard to appointments to official positions in the colony. The royal governor stated in a letter to the secretary of state, as late as 1770, that the attempt on the part of the colonists systematically to boycott British goods was largely due to the influence of the British merchants in having certain acts of Parliament passed, laying duties on articles imported into the colony. The resistance of the colonists was against the merchants, and the British government in so far as it was dominated by them. It was always expressly stated by the colonists that they desired to continue loyal to the crown.

The House of Burgesses, the popular branch of the legislature, was expected to conserve the interests of the people and to prevent if possible oppressive measures. As early as 1635 it wielded much power, and during the Protectorate it was under popular influence the supreme authority in the colony. But for some time after the royalist reaction (1660), especially under Berkeley, it was not popular but rather a dictatorial oligarchy under the influence of the governor. Under Culpeper and Howard, who followed Berkeley, there was a decided opposition on the part of the

burgesses. This resistance to oppressive royal authority increased throughout the remainder of the colonial period, and was very pronounced at certain times in the eighteenth century. The governor had in theory much power over the House; still in actual administration he was compelled to call upon that body for assistance in conducting his government. In the seventeenth, and especially in the eighteenth century the House was recognized as having a large share in the direction of matters of finance. From a very early date the House maintained its right to levy taxes, and the governor and the home government recognized this claim. Over the royal revenues, such as the quit-rents and the customs duties, the House had little power, but it controlled directly the other revenues of the colony. The refusal of that body to make appropriations interfered very seriously with the plans of certain governors. It has been shown that the power over appropriations enabled the House to encroach upon the governor in purely executive matters. The practice of giving detailed instructions as to the disposition of certain funds appropriated left the governor but little discretion as to their use. The House not only prescribed in detail the purposes for which military supplies were to be used, but also by putting the funds in the hands of committees dictated the course of military operations and exercised much authority over the troops. The power of the House was greatly increased by combining with its control over finance the appointment of the treasurer. Although the governor was explicitly instructed by the home government to separate the offices of treasurer and speaker, which had been combined in 1699, still it was not until 1766 that this was done. And when the separation did take place it was a voluntary act on the part of the House and not on account of the royal instructions.

Special agents were, from time to time, sent by the House

to England to negotiate matters in which the colonists were much concerned, and after 1759 that body employed a regular agent, who remained in England. The home government recognized the power of the House in the eighteenth century, and it was repeatedly demonstrated that the royal administration would not be successful without the co-operation of that body. The address of the House of Burgesses to the governor, as late as 1766, soon after the repeal of the obnoxious Stamp Act, indicated the loyal attitude of the colonists towards the home government. Three years later, when the House passed resolutions advising the colonists to be frugal in the use of British manufactures, it was the English manufacturers and merchants as well as the British government that was complained of. These resolutions, it is true, were provoked by certain acts of Parliament imposing duties on certain articles, but there was an expression of loyalty contained therein.

The colonists realized that it was only through the House of Burgesses that they could ever hope to restrain a dictatorial governor and to prevent the execution of oppressive British policy. The submission of the governor to the demands of the House from time to time convinced that body of the gradual decline of royal authority in the colony. But there was no organized movement in favor of independence, for up to the very beginning of the Revolution the colonists sincerely maintained their loyalty to the crown. Since the royal governor in the colony and British officials in England who were in a position to know the facts, and who would not be likely to exaggerate the financial condition of the colony, stated about the close of the seventeenth century, and also near the Revolution, that Virginia paid more into the British treasury than any other colony, and since the colonists bore the expenses of the government, the maintenance of the military system aided neighboring colo-

nies in time of emergency and also rendered assistance to the British government in offensive wars outside the colony, it was but natural that they should demand the common rights of Englishmen. They were denied these rights, and after every available means of securing them was exhausted they were compelled to meet with force the armed opposition of the British government.



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The above commissions and instructions are found in the Division of Manuscripts, Library of Congress, and are transcripts of the originals in the British Public Record Office. They furnish an indispensable source of information on the policy of the British government regarding the colony, and the relation of the governor both to the home government and to the colonists. They deal with matters affecting every phase of the government and of the life of the colonists, and indicate the opinion of the British government on the conditions existing or anticipated, and show the methods adopted in the effort to solve the problem of colonial administration.

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by these volumes. A most useful and authentic source indicating the relation of the Privy Council to the colonies.

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## INDEX

- Abercromby, James, 65, 79, 181n, 183, 298  
 Accomac county, 262, 337, 357n  
 Adjutant, 338  
 Agent of House of Burgesses, 182-184, 276n  
 Agent for Prizes, 326-327  
 Albany Congress, 210, 296  
 Albemarle, Earl of, 60n, 64, 65, 66, 67, 79, 131-132, 177, 328  
 Amherst, Sir Jeffrey, 60n, 67, 300  
 Andros, Sir Edmund, 112, 115, 148, 165, 180, 290, 324  
 Appeals to home government, 310-312  
 Arlington, Earl of, 33, 107  
 Armorer, 232n, 337  
 Assembly, Acts of, 190, 193, 194, 198-202, 207, 242, 252, 260, 263, 264, 277, 281, 282, 285, 316, 350  
 Atkins, Edmund, 342n  
 Attorney-general, 232n, 234n, 235n, 236, 248, 262, 321-324  
 Attorney- and solicitor-general, 38, 40-41, 68, 199, 262, 310  
 Auditor, 47, 232n, 234n, 235n, 251, 257, 263-268, 269  
 Auditor-general, 38, 39-40, 47, 72, 187, 232n, 236, 239, 251, 257, 264, 265, 269, 277, 288  
  
 Bacon, Nathaniel, 92, 107, 111, 190  
 Bacon's Rebellion, 33, 92, 109, 155, 190, 193  
 Bahama Islands, 55n, 97, 257, 324  
 Baltimore, Lord, 104  
 Barbadoes, 253, 291  
 Benbow, Admiral, 97n, 291  
 Bennett, Richard, 105  
 Berkeley, Sir William, 31, 75, 91, 94, 97, 105-108, 113, 147, 148, 205, 213, 326  
 Bermuda, 55n  
 Beverley, Major Robert, 110, 111, 206-207  
     389]
- Beverley, William, 45  
 Bishop of London, 43, 53, 68, 89, 123, 129n, 130, 178-179, 290  
 Blackiston, Nathaniel, 45, 62  
 Blathwayt, William, 39-40, 45, 265, 288  
 Blair, Reverend James, 113, 120, 123, 178-180  
 Blair, John, 129n, 133, 136  
 Bland, Giles, 302  
 Board of Trade, 38, 41-44, 46, 52, 55, 58, 62, 64, 68, 72, 84, 126, 134, 152, 160, 166, 187, 212, 216, 220, 252, 253, 258, 293, 298, 301, 303, 310, 322, 327, 342, 346  
 Botetourt, Baron de, 59, 60, 67, 136-142, 148, 328, 345  
 Boycott, of British goods, 34-35  
 Braddock, General Edward, 298  
 Burwell, Lewis, 127  
 Byng, Robert, 328  
 Byrd, William, 40, 47, 154, 187, 216, 267, 357  
  
 Canada, 126, 237, 295, 304, 352  
 Cape Breton, 295, 353  
 Carter, Robert, 124, 357n  
 Carthagen, 96, 125-126, 293, 352  
 Cary, Miles, 218, 358  
 Castle duty, 232  
 Catholics, 171-172, 191  
 Cathcart, Lord, 294  
 Charles I, 33n, 74, 104, 189, 289  
 Charles II, 32, 33, 36, 37, 46, 82, 105, 107  
 Chancellor of exchequer, 276  
 Chicheley, Sir Henry, 108, 109, 148, 302  
 Clayborne, William, 104  
 Collectors, 245-253, 332  
 Commissioners of the customs, 37, 38, 68, 72, 187, 247, 251, 253, 258, 261  
 Commissioners for trying pirates, 332-334

- Commissary, 178-181. 234n, 235n, 236  
 Comptroller-general of accounts of the customs. 38, 251  
 Comptrollers of the customs, 261-263  
 Connecticut, 55n, 288n, 298n, 299, 300  
 Constables, 318-319  
 Coroners, 319-321  
 Council, salary of president of, 80; early history of, 150; executive, legislative and judicial functions, 151; appointed by king, 152-153; men of wealth and social position, 153; appointment for life, 155; power of governor to suspend, 155-156; quorum and attendance, 156-157; salary, 157-158; privileges, 159; fraud, 159-160; governor's instructions not known to, 161-163; certain governors removed by opposition of, 164-166; relations with House, 167-169; similar to House of Lords, 169; constituted General Court, 169-170; relation of to church affairs, 170-173; president of, 175-178; offices of naval officer and collector controlled by, 248; executive power of governor shared by, 251, 256, 257, 259, 261, 283, 290; fraud of, 257. 266; address of to king, 297  
 County lieutenant, 337, 358n  
 County levy, 243, 314  
 Court of oyer and terminer, 309, 322, 331  
 Court of vice-admiralty, 309, 324-326, 332, 333  
 Cromwell, Oliver, 31, 32, 105  
 Crown Point. 298  
 Culpeper, Lord, 33, 67, 68, 69, 73, 75, 77, 82, 91, 107, 108-110, 111, 113, 148, 167, 177. 193, 205, 227, 265, 307  
 Dartmouth, Earl of, 144  
 Delaware, 325  
 Diggs, Dudley, 267  
 Diggs, Edward, 246  
 Dinwiddie, Robert, 65, 66, 76, 77, 79, 83, 84, 96, 100, 127-133, 136, 148, 177. 210, 212, 258, 276, 297, 299, 302  
 Drysdale, Hugh, 60, 121-124, 128, 148, 165, 255  
 Dunmore, Earl of, 60. 69, 77, 78, 79, 142-146, 148, 212, 327  
 Eastern shore, 248n, 251n, 260, 262  
 Edenton, North Carolina, 287  
 Elizabeth City county, 203, 337  
 Episcopal church, 106, 126, 170-173  
 Escheators, 221-223, 357n  
 Fauquier, Francis, 33, 34, 55, 58, 133-136, 148, 166, 213, 260, 267, 300, 343  
 Fines and forfeitures, 232, 265  
 Frauds, 239-242, 252. 271, 282  
 French and Indian War, 50, 56, 58, 65, 96, 132, 133, 184, 211, 280, 297, 304, 348, 353  
 General court, 307-309, 313, 318, 324  
 Georgia, 126, 294, 343, 352  
 Gooch, William, 52, 53, 60, 82, 83, 96, 100, 124-127, 128, 133, 148, 166, 293, 295, 302, 352  
 Gordon, Patrick, 100  
 Governor, commission, 67; instructions, 69-72; reported regularly to home government, 72; salary and fees, 74-80; not to receive gifts from Assembly, 81-84; instructions made public, 85; appointive power, 85; power of removal, 86; to regulate salaries and fees, 87; power over land grants, 87-88; relation of church affairs, 88-89; pardoning power of, 89-90; relations of with Council, 91-93; relations of with Assembly, 93-95; relations of to judicial system, 95-96; relations of to military system, 96; relations of to admiralty affairs and ships of war, 97; power of over guard ships, 97-98; power of over British merchant ships, 98; relations of to financial system, 99; diplomatic powers of, 100; dignity of governorship, 100; vice-regal character of, 101; revenue accounts examined by, 236; power of over collectors, 247-248; naval officers accounts examined by, 256; report of auditor examined by, 264

- Governor-in-chief, 60-67, 76, 131  
 Greenwich, hospital at, 328  
 Grymes, John, 47  
 Gunner at Jamestown, 232n
- Halifax, Earl of, 44, 132, 270, 342, 343  
 Hamilton, Andrew, 284  
 Hanbury, John, 48, 49, 297  
 Hanbury, C., 48  
 Harvey, Sir John, 33n, 74, 94, 103-104, 147, 165  
 Hawley, Jerome, 245-246  
 Henry, Patrick, 135  
 Heyman, Peter, 284  
 High Court of Admiralty of Great Britain, 324, 326, 332  
 Hill, Edward, 357n  
 Hillsborough, Earl of, 44, 142, 143  
 House of Burgesses—early history of, 189; suffrage, 190-191; number of members and attendance, 191; organization, 191; speaker, 191-192; clerk, 192; frequency of sessions, 193-195; power over taxation, 194; expense, 195-196; salary of speaker, 196-197; salary of clerk, 197; salary of clerk of General Assembly, 197; salary of doorkeepers, 197; salary of clerks of committees, 197; salary of public printer, 198; royal supervision of legislation, 198-202; "suspending clause," 200-201; disallowance of laws, 201-202; judicial powers, 202-204; power over church affairs, 204; power of governor over legislation, 204-205; assembly called, prorogued and dissolved by governor, 206-207; governor's power over clerk, 207; acts of assembly signed by governor, 207; appointive power of governor used to influence members of House, 208-209; dependence of governor upon House, 209-210; executive powers encroached upon by House, 210-212; treasurer controlled by, 212-213; efficiency of, 213-214; petition of comptroller of customs to, 261; treasurer appointed by, 275; inspectors of tobacco ineligible to membership in, 281
- Howard, Lord, 69, 73, 77, 91, 110-111, 113, 115, 129, 148, 162, 165, 177, 193, 205, 302  
 Hunter, Colonel Robert, 117, 194, 217, 309
- Imperial control, 41-44  
 Indians, 96, 107, 139, 191, 237, 289, 339-342  
 Indian trade, 348-349  
 Inspectors of tobacco, 279-283  
 Interpreter for the Indians, 349-351
- Jamaica, 97, 126, 257, 258, 291, 293, 294, 324, 352  
 James I, 31, 102, 150, 189  
 James II, 111, 170  
 James River, 248n, 251n, 252, 260, 262  
 Jefferson, Thomas, 138  
 Jeffreys, Colonel Herbert, 107-108, 148  
 Jennings, Edmund, 40, 117, 178, 357n  
 Johnson, Sir William, 342n  
 Jones, Reverend Hugh, 179  
 Judicial system, 307-313  
 Justices of the peace, 317-318
- Kemp, Richard, 239, 245  
 Kent Island, Maryland, 104  
 Kidd, Captain, 330  
 King George county, 357n  
 Knight, Sir John, 302
- Lancaster, treaty of, 237, 346  
 Lancaster county, 357n  
 Land system, 215-218  
 Larkin, George, 332  
 Lee, Richard Henry, 138  
 Lee, Thomas, 127  
 Leeward Islands, 291  
 Leheup, Peter, 185, 187  
 Liquors, 238, 272, 275  
 London, 80, 181, 236, 245  
 London Company, 31, 60, 102, 103, 105, 150, 167, 193, 275, 310  
 Lords of admiralty, 37, 38, 68, 97, 187, 328, 331  
 Lords of trade, 37, 38  
 Lords of the treasury, 37, 38, 68, 72, 81, 96, 247, 261, 265, 268, 291  
 Loudoun, Earl of, 60n, 61, 66, 67, 132, 347  
 Loyalty to crown, 31-35

- Ludwell, Philip, 45, 47, III, 226  
 Ludwell, Thomas, 182n, 185  
 Lynnhaven Bay, 260, 330
- Marlborough, Duke of, 118  
 Maryland, 55n, 104, 237, 238, 252, 257, 274, 282, 288n, 295, 298n, 325, 330, 331, 353  
 Massachusetts, 55n, 288n, 291, 298n, 299, 300  
 Merchants, 34, 35, 45, 46-59, 268, 288, 312  
 Military system, 336-339  
 Milner, Thomas, 357n  
 Minister attending assembly, 232n  
 Money, 269-270, 270n  
 Montague, Edward, 183  
 Morryson, Colonel Francis, 182n, 185
- Naval officers, 232n, 248, 253-257, 357n  
 Navigation acts, 253, 325  
 Neal, Thomas, 284, 285, 286  
 Nelson, Thomas, 139  
 Nelson, William, 141  
 Newcastle, Duke of, 51, 302  
 New England, 285  
 New Hampshire, 288n, 298n  
 New Jersey, 55n, 288n, 295, 298n, 325  
 New York, 55n, 210, 237, 288, 289, 290, 291, 293, 295, 298n, 299, 300, 301, 325, 353  
 Niagara, 298  
 Nicholson, Francis, 82, 84, III, 112, 113-115, 148, 160, 162, 165, 180, 264, 290, 301, 328  
 Noell, Martin, 46  
 North Carolina, 55n, 97, 220, 237, 238, 257, 274, 282, 292, 298, 324, 329, 330, 343, 353  
 Northern Neck, 220, 233n  
 Northampton county, 337, 357n  
 Northumberland county, 357n  
 Nott, Edward, 60, 116-117, 128, 148, 194, 217  
 Nova Scotia, 298
- Orkney, Earl of, 60, 61, 62, 63, 64, 65, 67, 182, 328
- Paper money, 55-59  
 Parish levy, 243, 314  
 Parliament, 32, 34, 35, 58, 74, 85, 90, 134, 138, 139, 140, 141, 237, 247, 248, 260, 284, 285, 298, 300, 310, 312, 326, 328, 332  
 Passengers, duty on, 239  
 Penn, William, 100  
 Pennsylvania, 55n, 97, 100, 257, 288n, 295, 298n, 324, 325  
 Perry, Micajah, 40, 45-48  
 Perry, Richard, 47  
 Philadelphia, 66, 287, 325  
 Pilots, 283  
 Pirates, 329-334  
 Pistole fee, 65, 84, 129-131, 133, 183, 210  
 Pitt, William, 135, 212, 297, 300  
 Plantation duty, 237, 268  
 Port duty, 232, 268  
 Postal system, 284-288  
 Postmaster, 284-288  
 Postmaster-general of England, 284, 287  
 Potomac River, 233n, 248n, 251n, 252  
 Pott, Dr. John, 103  
 Povey, Thomas, 46  
 Princess Anne county, 337  
 Privy Council, 36, 37, 42, 68, 74, 75, 77, 82, III, 124, 128, 223, 310-311, 346  
 Prize ships, 268, 327  
 Prizes, agent for, 326-327  
 Proprietary government, 31  
 Provincial officials, 360-361  
 Public levy, 242, 314
- Quary, Colonel Robert, 114-115, 178, 260, 292, 336, 353  
 Quit-rents, 180, 187, 188, 219, 225, 233-237, 239n, 240, 241, 265-266, 268, 269, 291, 292, 303, 304, 313, 314, 315, 322
- Randolph, Edward, 216n, 239n  
 Randolph, Peyton, 65, 138, 188, 276n  
 Randolph, Sir John, 53  
 Randolph, William, 357n  
 Rappahannock River, 233n, 248n, 251n, 330  
 Receiver-general, 232n, 234n, 235n, 251, 264, 267-271, 314, 332  
 Receiver-general of the customs, 38, 247  
 Receiver-general of the Royal Right and Perquisites of the Admiralty, 327-328  
 Rhode Island, 288n, 298n



- Richmond county, 357n  
 Robinson, John, 127, 212, 276  
 Roscow, James, 357  
 Royal African Company, 49, 50, 123, 126  
 Royal officials, 358-360  
  
 Sandys, Sir George, 105  
 Scarborough, Edmund, 357n  
 Searchiers, 260-261  
 Secretary, 223-229, 332  
 Servants, 238, 274  
 Sewell's Point, 283n  
 Shaftsbury, Earl of, 302  
 Sheriffs, 234n, 235n, 239n, 243, 274, 312-317  
 Ships, 51  
 Shipmasters, 232, 240, 273, 286  
 Shirley, Governor, 295, 353  
 Six Nations, 126  
 Skins and furs, 237, 271  
 Slaves, 238, 273, 274  
 Smith, Charles, 45  
 Smith, General Robert, 182n, 185  
 Smith's Point, 283n  
 Solicitor of Virginia Affairs, 47, 181-188, 232n, 235n, 236, 269, 298  
 South Carolina, 55n, 119, 237, 257, 258, 293, 298, 343, 352, 353  
 Spaniards, 126, 293, 294, 352  
 Spanish prisoners, 256  
 Spencer, Nicholas, 110  
 Spotswood, Alexander, 60, 62, 63, 118-121, 123, 124, 148, 165, 180, 199, 210, 216, 228, 235, 287, 293, 301, 309, 329, 330, 352  
 Stamp Act, 33, 34, 134, 135, 136, 271  
 Stegg, Captain Thomas, 263  
 Stith, Reverend William, 130  
 Stuart, John, 343-345  
 Sunderland, Earl of, 177  
 Superintendent of Indian Affairs, 343-348  
 Surveyor-general, 218-220, 358  
  
 Surveyor-general of the customs, 45n, 51, 247, 252, 257-260, 261, 302, 332  
 Surveyors, 218-220, 358  
  
 Taxation, methods of, 230  
 Thatch, 330  
 Tithables, 243-244  
 Tobacco, 230, 231, 235n, 237, 242, 244, 245, 278-283, 316  
 Trade, total value, estimated, 302  
 Treasurer, 274, 275-278  
 Trials, to be held in England, 312  
 Tryon, Governor, 142, 143  
 Two shillings per hogshead, duty of, 230, 231n, 235, 240, 268, 297, 303  
  
 Virginia Company, 150  
 Virginia Gazette, 33  
  
 Wager, Sir Charles, 45n  
 Washington, George, 132, 133, 138  
 Wealth and importance of Virginia, 288, 302-303  
 West, Captain Francis, 103  
 West, Captain John, 104  
 West Indies, 54, 236, 238, 241, 257, 274, 291, 293, 329  
 Westmoreland county, 357n  
 William and Mary College, 89, 120, 142, 179, 180, 181, 191n, 218, 237, 238, 251, 258, 271, 273  
 Williamsburg, 35, 80, 142, 285n, 287, 337  
 Williamson, Sir Joseph, 302  
 Writs of assistance, 262  
 Wyatt, Sir Francis, 31, 102-103, 105, 147, 189  
  
 Yeardley, Sir George, 103, 147, 189  
 York county, 48, 358  
 York River, 260  
 Young, Colonel John, 61















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